

***Digital Teleport Telecommunications  
System Development Agreement #1  
Among***

**Oklahoma Turnpike Authority**



**Oklahoma Department of Transportation**



**and**

**Digital Teleport, Inc.**

**— — DTI — —**  
**DIGITAL**  
**TELEPORT, INC.**

# **DIGITAL TELEPORT TELECOMMUNICATIONS SYSTEM DEVELOPMENT AGREEMENT #1**

THIS DIGITAL TELEPORT TELECOMMUNICATIONS SYSTEM DEVELOPMENT AGREEMENT #1 (this "Agreement") is made and entered into as of this 1st day of July, 1999 (the "Effective Date"), by and among the Oklahoma Turnpike Authority, an instrumentality of the State of Oklahoma ("OTA"), the Oklahoma Department of Transportation, an agency of the State of Oklahoma ("ODOT"), and Digital Teleport, Inc., a Missouri Corporation ("DTI"). OTA and ODOT are sometimes individually referred to herein as an "Agency" and collectively as the "Agencies".

## **RECITALS**

A. Each Agency is the owner of certain Rights-of-Way (as hereinafter defined), by fee, license, easement or other interest, within certain real property in the State of Oklahoma upon which it operates its facilities.

B. DTI desires to acquire from each Agency certain nonexclusive licenses (as hereinafter defined) in, on, upon, over, under, across and through certain portions of each Agency's Rights-of-Way (as hereinafter defined), as necessary and convenient to permit and enable DTI to design, survey, engineer, construct, install, operate, maintain, repair, remove and replace the Telecommunications System (as hereinafter defined).

C. The Agencies desire to acquire from DTI certain rights and privileges (as hereinafter defined) in and with respect to certain dark fibers and conduit (as hereinafter defined) which shall be installed by DTI on certain portions of the Agencies' Rights-of-Way (as hereinafter defined) concurrently with the installation of the Telecommunications System (as hereinafter defined).

D. In consideration of the grant of such nonexclusive licenses by each Agency, DTI hereby grants to each Agency, on the terms and subject to the conditions and limitations of this Agreement, an exclusive right to use the said dark fibers and conduit.

E. In consideration of the grant of such rights and privileges by DTI, each Agency hereby grants to DTI, on the terms and subject to the conditions and limitations of this Agreement, a nonexclusive license to use the said portions of the Agencies' Rights-of-Way (as hereinafter defined).

F. In order to effectuate the intent of the forgoing, DTI and the Agencies desire to enter into a contractual relationship, realizing that close cooperation and good faith in the implementation of this Agreement are critical to the success of their respective operations, and each will work diligently to achieve their common objectives.

# **AGREEMENT**

IN CONSIDERATION OF THE FOREGOING RECITALS AND THE RESPECTIVE COVENANTS, AGREEMENTS, REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

## **ARTICLE 1**

### **DEFINITIONS**

**1.1 Defined Terms.** Unless otherwise defined, capitalized terms used herein shall have the following meanings:

a) **“Agency Open Appearances”** shall mean collectively the Telecommunications System (as hereinafter defined) access locations identified and described in Section 3.3 of Article 3 of this Agreement that shall be made available by DTI, when the Telecommunications System (as hereinafter defined) has been installed, for the exclusive use of the Agencies.

b) **“Agency Conduit”** shall mean collectively the conduit identified and described in Section 3.2 of Article 3 of this Agreement that shall be made available by DTI, when the Telecommunications System (as hereinafter defined) has been installed, for the exclusive use of the Agencies.

c) **“Agency Fibers”** shall mean collectively the dark fibers identified and described in Section 3.1 of Article 3 of this Agreement that shall be made available by DTI, when the FOC (as hereinafter defined) has been installed, for the exclusive use of the Agencies.

d) **“Agency’s Representative”** shall mean the person or persons designated by each Agency to receive notices under this Agreement when any notice to an Agency’s Representative is required by any term or provision of this Agreement. Each Agency may designate different representatives to receive notices for different purposes, as determined from time to time by each Agency; but each designated representative and each successor representative shall be identified by each Agency in a written notice to DTI.

e) **“Agency System”** shall mean collectively the Agency Conduit, Agency Fibers, and Agency Open Appearances.

f) **“Approved System Segments”** shall mean collectively the segments, sections or portions of the Rights-of-Way (as hereinafter defined) on which the Telecommunications System (as hereinafter defined) will be installed, identified in Section 2.1 of Article 2 of this Agreement and Section 2.2 of Article 2 of this Agreement.

g) “**Breach**” shall mean the material failure by either party to perform its obligations under this Agreement in the time and manner herein provided.

h) “**FOC**” shall mean the fiber optic cable to be installed by DTI on, upon, over, under, across or through each of the Approved System Segments, on the terms and subject to the conditions of this Agreement.

i) “**DTI System**” shall mean the telecommunications transmission system installed by DTI on, upon, over, under, across or through each of the Approved System Segments, including the FOC and such number of Regenerator Sites (as hereinafter defined) and all electronics and other equipment, which DTI deems appropriate to create a fiber optic communications transmission system; provided, however, that the DTI System shall not include any part of the Agency System.

j) “**Maps**” shall mean maps of the Rights-of-Way (as hereinafter defined) and plan and profile drawings, engineering and architectural data regarding bridges, terminals and other obstacles previously and hereafter compiled by an Agency pertaining to its Rights-of-Way (as hereinafter defined).

k) “**Open Appearances**” shall mean buried hand holes at locations along the Rights-of-Way (as hereinafter defined) used to provide access to the FOC.

l) “**Regenerator Site**” shall mean a facility in which equipment is located which receives, regenerates, retransmits, adds or drops an opti/electronic telecommunications transmission signal, together with all attendant equipment and structures appurtenant thereto, including power sources.

m) “**Rights-of-Way**” shall mean the real property and rights thereto utilized by the Agencies for the highway, interstate and turnpike facilities described in Section 2.1 of Article 2 of this Agreement and Section 2.2 of Article 2 of this Agreement which are owned, operated, leased or controlled by the Agencies pursuant to existing grants, easements, leases, franchises, licenses or other agreements or arrangements. The nonexclusive use of the Rights-of-Way will be restricted to a four-foot wide strip, 2 feet on each side of a centerline, identified in the Working Plans (as hereinafter defined) and approved by the appropriate Agency.

n) “**SMF-28**” shall mean a single-mode optical fiber cable meeting the specifications set forth in the Corning Optical Fiber product specifications PL1044, issued April 1996.

o) “**Telecommunications System**” shall mean collectively the DTI System and the Agency System.

1.2 **Other Defined Terms.** The following capitalized terms shall have the meanings given to them in the corresponding Articles set forth below:

Terms

Section

Agency

Introduction

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Approved Plans  
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Cimarron Fibers  
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## ARTICLE 2

### GRANT OF LICENSES TO DTI

**2.1 Use of Rights-of-Way For DTI System Construction and Maintenance.** Each Agency hereby grants to DTI, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use certain Rights-of-Way for the following purposes consistent with the terms of this Agreement: to design, survey, engineer, construct, install, operate, maintain, repair, remove and replace one DTI System; and, in connection therewith to install, maintain, repair, remove and replace the Agency System. DTI hereby accepts the grant of such nonexclusive license from the Agencies for such purposes.

a) ODOT grants to DTI, during the term of this Agreement, a nonexclusive right to use the following rights-of-way ("ODOT-BA-Expwy") beginning at Highway 169 and the Broken Arrow Expressway, Tulsa, Oklahoma, going northwest on the Broken Arrow Expressway to Highway 75, Tulsa, Oklahoma. The location and specifications of the DTI System, including Open Appearances, will be submitted in the Working Drawings and approved by ODOT.

b) ODOT grants to DTI, during the term of this Agreement, a nonexclusive right to use the following rights-of-way ("ODOT-H75-I244") beginning at Highway 75 at Denver Ave., Tulsa, Oklahoma, going east on Highway 75, then north on Highway 75 to the intersection of Highway 75 and Interstate 244, then west on Interstate 244 to the intersection of Interstate 244 and Highway 64, Tulsa, Oklahoma. The location and specifications of the DTI System, including Open Appearances, will be submitted in the Working Drawings and approved by ODOT.

c) ODOT grants to DTI, during the term of this Agreement, a nonexclusive right to use one approximately 50-foot by 50-foot portion of the Rights-of-Way ODOT-H75-I244 for the placement of Regenerator Site facilities. DTI will recommend a desired location for placement of a Regenerator Site on the Rights-of-Way ODOT-H75-I244. The location and specifications of the Regenerator Site will be submitted in the Working Drawings and approved by ODOT. At the sole option and in the sole discretion of DTI, and subject to the acquisition of all necessary permits from all local authorities, DTI may design, construct, install and maintain the Regenerator Site. The exact location and ingress and egress to such Regenerator Site will be subject to ODOT approvals prior to constructing such Regenerator Site. DTI is responsible for all construction and maintenance costs including the buildings, driveways, drainage, utilities, fencing and insurance. ODOT is not responsible for any damages incurred to the buildings or contents.

**2.2 Use of Rights-of-Way For DTI System Maintenance, Regenerator Sites and Lateral Builds.** Each Agency hereby grants to DTI, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use certain Rights-of-Way for the following purposes consistent with the terms of this Agreement: to operate, maintain, and repair the DTI System; and, in connection therewith to maintain and repair the Agency System. The grant of this nonexclusive license for certain Rights-of-Way hereinafter identified in this Section 2.2 of Article 2 of this Agreement does

not include the installation of any conduit or FOC; in such instances DTI will use only the conduit and FOC already in place at such locations pursuant to DTI's separate agreement with MBO Video Inc. DTI hereby accepts the grant of such nonexclusive license from the Agencies for such purposes.

a) ODOT grants to DTI, during the term of this Agreement, a nonexclusive right to use the following rights-of-way ("ODOT-I40") beginning at the Arkansas stateline, going west on Interstate 40 to the intersection of the Muskogee Turnpike and Interstate 40 for the placement of 60 DTI System Open Appearances. The location and specifications of the Open Appearances will be submitted in the Working Drawings and approved by ODOT. ODOT will allow DTI to egress from such Open Appearances only in a lateral direction from 10 of these Open Appearances. The location and specifications of the Open Appearances identified for egress will be submitted in the Working Drawings and approved by ODOT. The use of Rights-of-Way ODOT-I40 does not include the installation of any conduit or FOC, it being understood that DTI will use the existing conduit and FOC already in place on the Rights-of-Way ODOT-I40 pursuant to DTI's separate agreement with MBO Video Inc.

b) ODOT grants to DTI, during the term of this Agreement, a nonexclusive right to use one approximately 50-foot by 50-foot portion of the Rights-of-Way ODOT-I40 for the placement of Regenerator Site facilities. DTI will recommend a desired location for placement of the Regenerator Site on the Rights-of-Way ODOT-I40. The location and specifications of the Regenerator Site will be submitted in the Working Drawings and approved by ODOT. At the sole option and in the sole discretion of DTI, and subject to the acquisition of all necessary permits from all local authorities, DTI may design, construct, install and maintain the Regenerator Site. The exact location and ingress and egress to such Regenerator Site will be subject to ODOT approvals prior to constructing such Regenerator Site. DTI is responsible for all construction and maintenance costs including the buildings, driveways, drainage, utilities, fencing and insurance. ODOT is not responsible for any damages incurred to the buildings or contents.

c) OTA grants to DTI, during the term of this Agreement, a nonexclusive right to use rights-of-way on the Muskogee Turnpike ("OTA-Muskogee") for the placement of 60 DTI System Open Appearances. The location and specifications of the Open Appearances will be submitted in the Working Drawings and approved by OTA. OTA will allow DTI to egress from such Open Appearances only in a lateral direction from 10 of these Open Appearances. The location and specifications of the Open Appearances identified for egress will be submitted in the Working Drawings and approved by OTA. The use of Rights-of-Way OTA-Muskogee does not include the installation of any conduit or FOC, it being understood that DTI will use the existing conduit and FOC already in place on the Rights-of-Way OTA-Muskogee pursuant to DTI's separate agreement with MBO Video Inc.

d) OTA grants to DTI, during the term of this Agreement, a nonexclusive right to use one approximately 50-foot by 50-foot portion of the Rights-of-Way OTA-Muskogee for the placement of Regenerator Site facilities. DTI will recommend a desired location for placement of a Regenerator Site on the Rights-of-Way OTA-Muskogee. The location and specifications of the Regenerator Site will be submitted in the Working Drawings and approved by OTA. At the sole option and in the sole discretion of DTI, and subject to the acquisition of all necessary permits from all local authorities, DTI may design, construct, install and maintain the Regenerator Site. The exact location and ingress and egress to such Regenerator Site will be subject to OTA approvals prior to constructing such

Regenerator Site. DTI is responsible for all construction and maintenance costs including the buildings, driveways, drainage, utilities, fencing and insurance. OTA is not responsible for any damages incurred to the buildings or contents.

e) ODOT grants to DTI, during the term of this Agreement, a nonexclusive right to use the following rights-of-way ("ODOT-BA-Expwy-East") on the Broken Arrow Expressway from the north end of the Muskogee Turnpike to the intersection of Highway 169 and the Broken Arrow Expressway, Tulsa, Oklahoma, for the placement of nine DTI System Open Appearances. The location and specifications of the Open Appearances will be submitted in the Working Drawings and approved by ODOT. ODOT will allow DTI to egress from such Open Appearances only in a lateral direction from two of these Open Appearances. The location and specifications of the Open Appearances identified for egress will be submitted in the Working Drawings and approved by ODOT. The use of Rights-of-Way ODOT-BA-Expwy-East does not include the installation of any conduit or FOC, it being understood that DTI will use the existing conduit and FOC already in place on the Rights-of-Way ODOT-BA-Expwy-East pursuant to DTI's separate agreement with MBO Video Inc.

f) ODOT grants to DTI, during the term of this Agreement, a nonexclusive right to use the following rights-of-way ("ODOT-H412") from the intersection of Interstate 244 and Highway 64 to the east end of the Cimarron Turnpike located at mile marker 59.31 for the placement of 31 DTI System Open Appearances. The location and specifications of the Open Appearances will be submitted in the Working Drawings and approved by ODOT. ODOT will allow DTI to egress from such Open Appearances only in a lateral direction from five of these Open Appearances. The location and specifications of the Open Appearances identified for egress will be submitted in the Working Drawings and approved by ODOT. The use of Rights-of-Way ODOT-H412 does not include the installation of any conduit or FOC, it being understood that DTI will use the existing conduit and FOC already in place on the Rights-of-Way ODOT-H412 pursuant to DTI's separate agreement with MBO Video Inc.

g) OTA grants to DTI, during the term of this Agreement, a nonexclusive right to use the following rights-of-way ("OTA-Cimarron") on the Cimarron Turnpike located at mile marker 59.31, going west to mile marker 26.5, then going southwest to the Stillwater exit located at mile marker 19.1A for the placement of 50 DTI System Open Appearances. The location and specifications of the Open Appearances will be submitted in the Working Drawings and approved by OTA. OTA will allow DTI to egress from such Open Appearances only in a lateral direction from eight of these Open Appearances. The location and specifications of the Open Appearances identified for egress will be submitted in the Working Drawings and approved by OTA. The use of Rights-of-Way OTA-Cimarron does not include the installation of any conduit or FOC, it being understood that DTI will use the existing conduit and FOC already in place on the Rights-of-Way OTA-Cimarron pursuant to DTI's separate agreement with MBO Video Inc.

h) OTA grants to DTI, during the term of this Agreement, a nonexclusive right to use two approximately 50-foot by 50-foot portions of the Rights-of-Way OTA-Cimarron for the placement of Regenerator Site facilities. DTI will recommend a desired location for placement of the Regenerator Sites on the Rights-of-Way OTA-Cimarron. The location and specifications of the Regenerator Sites will be submitted in the Working Drawings and approved by OTA. At the sole option and in the sole discretion of DTI, and subject to the acquisition of all necessary permits from all local



authorities, DTI may design, construct, install and maintain the Regenerator Sites. The exact location and ingress and egress to such Regenerator Sites will be subject to OTA approvals prior to constructing such Regenerator Sites. DTI is responsible for all construction and maintenance costs including the buildings, driveways, drainage, utilities, fencing and insurance. OTA is not responsible for any damages incurred to the buildings or contents.

i) In the event that DTI does not use both of the Regenerator Site facilities to which DTI has a right to request from OTA pursuant to Section 2.2(h) of Article 2 of this Agreement, ODOT grants to DTI, during the term of this Agreement, a nonexclusive right to use one approximately 50-foot by 50-foot portion of the Rights-of-Way ODOT-H412 for the placement of Regenerator Site facilities. DTI will recommend a desired location for placement of a Regenerator Site on the Rights-of-Way ODOT-H412. The location and specifications of the Regenerator Site will be submitted in the Working Drawings and approved by ODOT. At the sole option and in the sole discretion of DTI, and subject to the acquisition of all necessary permits from all local authorities, DTI may design, construct, install and maintain the Regenerator Site. The exact location and ingress and egress to such Regenerator Site will be subject to ODOT approvals prior to constructing such Regenerator Site. DTI is responsible for all construction and maintenance costs including the buildings, driveways, drainage, utilities, fencing and insurance. ODOT is not responsible for any damages incurred to the buildings or contents.

## ARTICLE 3

### GRANT OF RIGHTS TO THE AGENCIES

3.1 Agency Fibers. DTI hereby grants to the Agencies, during the term of this Agreement and each renewal term hereof, as hereinafter specifically provided with respect to each Agency, an exclusive right to use certain dark fibers in the FOC, as and when the said FOC has been installed by DTI in accordance with the terms of this Agreement.

a) DTI grants to ODOT an exclusive right to use 16 SMF-28 or equivalent fibers (the "I40 Fibers") in the FOC from the Arkansas stateline to the intersection of Interstate 40 and the Muskogee Turnpike via the Rights-of-Way ODOT-I40. DTI will perform the necessary splices and connections to provide an uninterrupted 16 fiber network on the Rights-of-Way ODOT-I40.

b) DTI grants to OTA an exclusive right to use 16 SMF-28 or equivalent fibers (the "Muskogee Fibers") in the FOC from the intersection of Interstate 40 and the Muskogee Turnpike to the Oklahoma State University telecommunications facility in Tulsa, Oklahoma via the Rights-of-Way OTA-Muskogee, ODOT-BA-Expwy-East, ODOT-BA-Expwy, and ODOT-H75-I244. DTI will perform the necessary splices and connections to provide an uninterrupted 16 fiber network on the Rights-of-Way OTA-Muskogee, ODOT-BA-Expwy-East, ODOT-BA-Expwy, and ODOT-H75-I244. DTI will splice the desired number of I40 Fibers to the Muskogee Fibers as specified by OTA. In the event that DTI is unable to utilize the Rights-of-Way ODOT-BA-Expwy, DTI will terminate the Muskogee Fibers in the Oklahoma State University telecommunications facility in Tulsa, Oklahoma using alternative in-ground rights-of-way not provided by the Agencies.

c) DTI grants to ODOT an exclusive right to use 36 SMF-28 or equivalent fibers (the "BA-Expwy Fibers") in the FOC from the intersection of the Broken Arrow Expressway and Highway 169, Tulsa, Oklahoma to the intersection of Highway 75 and Denver Ave, Tulsa, Oklahoma via the Rights-of-Way ODOT-BA-Expwy and ODOT-H75-I244. DTI will perform the necessary splices and connections to provide an uninterrupted 36 fiber network on the Rights-of-Way ODOT-BA-Expwy and ODOT-H75-I244.

d) DTI grants to ODOT an exclusive right to use 54 SMF-28 or equivalent fibers (the "H75-I244 Fibers") in the FOC from the intersection of Highway 75 and the Broken Arrow Expressway, Tulsa, Oklahoma to the intersection of Interstate 244 and Highway 64, Tulsa, Oklahoma via the Rights-of-Way ODOT-H75-I244. DTI will terminate the H75-I244 Fibers from both directions, east and west, in the Oklahoma State University telecommunications facility in Tulsa, Oklahoma. DTI will perform the necessary splices and connections to provide an uninterrupted 54 fiber network on the Rights-of-Way ODOT-H75-I244. DTI will splice the desired number of H75-I244 Fibers to the BA-Expwy Fibers at the intersection of Highway 75 and the Broken Arrow Expressway, Tulsa, Oklahoma, as specified by ODOT.

e) DTI grants to ODOT an exclusive right to use 24 SMF-28 or equivalent fibers (the "H412 Fibers") in the FOC from the Oklahoma State University telecommunications facility in

Tulsa, Oklahoma to the east end of the Cimarron Turnpike located at mile marker 59.31 via the Rights-of-Way ODOT-H75-I244 and ODOT-H412. DTI will perform the necessary splices and connections to provide an uninterrupted 24 fiber network on the Rights-of-Way ODOT-H75-I244 and ODOT-H412.

f) DTI grants to OTA an exclusive right to use 24 SMF-28 or equivalent fibers (the "Cimarron Fibers") in the FOC from the east end of the Cimarron Turnpike located at mile marker 59.31 to the Oklahoma State University telecommunications facility in Stillwater, Oklahoma via the Rights-of-Way OTA-Cimarron. DTI will splice the desired number of Cimarron Fibers to the H412 Fibers, as specified by OTA. DTI will perform the necessary splices and connections to provide an uninterrupted 24 fiber network on the Rights-of-Way OTA-Cimarron.

**3.2 Agency Conduit.** DTI hereby grants to the Agencies, during the term of this Agreement and each renewal term hereof, as hereinafter specifically provided with respect to each Agency, an exclusive right to use the following conduits, as and when the said conduits have been installed by DTI in accordance with the terms of this Agreement;

a) DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use two - 1 1/4" interducts or conduits in the DTI System along the Rights-of-Way ODOT-BA-Expwy and ODOT-H75-I244. These conduits shall not be used for the Agencies Fibers.

**3.3 Agency Open Appearances Provided By DTI.** DTI hereby grants to the Agencies, during the term of this Agreement and each renewal term hereof, as hereinafter specifically provided with respect to each Agency, an exclusive right to use certain Open Appearances and dark fiber in the DTI System. DTI shall allow each Agency access to the Agency Fibers and Agency Conduit at these locations; provided, however, that such access shall be subject to DTI supervision on not less than forty-eight (48) hours' prior notice to DTI.

a) DTI shall provide 20 H-20 rated precast large Open Appearances for the BA-Expwy Fibers in hand holes at locations specified by the Agencies along Rights-of-Way ODOT-BA-Expwy. DTI will provide, during the installation of the FOC, a 100ft coil of the Agency Fibers in the Agency Open Appearances. The specifications and installation procedures for the large Open Appearances will be identified in the Working Drawings and approved by ODOT. DTI will perform the necessary splices and connections to provide an uninterrupted fiber network on the Rights-of-Way ODOT-BA-Expwy.

b) DTI shall provide 10 H-20 rated precast large Open Appearances for the H75-I244 Fibers in hand holes at locations specified by the Agencies along Rights-of-Way ODOT-H75-I244. DTI will provide, during the installation of the FOC, a 100ft coil of the Agency Fibers in the Agency Open Appearances. The specifications and installation procedures for the large Open Appearances will be identified in the Working Drawings and approved by ODOT. DTI will perform the necessary splices and connections to provide an uninterrupted fiber network on the Rights-of-Way ODOT-H75-I244.

**3.4 Agency Open Appearances Utilized By DTI.** DTI hereby grants to the Agencies, during the term of this Agreement and each renewal term hereof, as hereinafter specifically provided

with respect to each Agency, an exclusive right to use certain dark fiber in the DTI System pulled into existing Open Appearances already in place on certain Rights-of-Way pursuant to the Agencies separate agreement with MBO Video Inc.

- a) DTI will provide, during the installation of the FOC, a 100ft coil of the I40 Fibers in 14 existing ODOT Open Appearances already in place on Rights-of-Way ODOT-I40 pursuant to ODOT's separate agreement with MBO Video Inc. DTI will perform the necessary splices and connections to provide an uninterrupted fiber network on the Rights-of-Way ODOT-I40.
- b) DTI will provide, during the installation of the FOC, a 100ft coil of the Muskogee Fibers in 19 existing OTA Open Appearances already in place on Rights-of-Way OTA-Muskogee pursuant to OTA's separate agreement with MBO Video Inc. DTI will perform the necessary splices and connections to provide an uninterrupted fiber network on the Rights-of-Way OTA-Muskogee.
- c) DTI will provide, during the installation of the FOC, a 100ft coil of the H412 Fibers in 2 existing ODOT Open Appearances already in place on Rights-of-Way ODOT-H75-I244 and ODOT-H412 pursuant to ODOT's separate agreement with MBO Video Inc. DTI will perform the necessary splices and connections to provide an uninterrupted fiber network on the Rights-of-Way ODOT-H75-I244 and ODOT-H412.
- d) DTI will provide, during the installation of the FOC, a 100ft coil of the Cimarron Fibers in 14 existing OTA Open Appearances already in place on Rights-of-Way OTA-Cimarron pursuant to OTA's separate agreement with MBO Video Inc. DTI will perform the necessary splices and connections to provide an uninterrupted fiber network on the Rights-of-Way OTA-Cimarron.

**3.5 Agency Right to Use Fibers and Conduit.** The Agencies shall each have an unrestricted right to use their respective Fibers and conduit in the Agency System for any lawful purpose without approval or consent from any of the other parties to this Agreement. The Agencies may donate, trade, barter, lease, or sell the Agency System or any portion thereof to any person or entity, including but not limited to, for-profit telecommunication providers for the purpose of transporting traffic.

**3.6 DTI License to Use Fibers and Conduit.** DTI shall have an unrestricted license to use the FOC and conduit in the DTI System for any lawful purpose without approval or consent from any of the other parties to this Agreement. DTI may donate, trade, barter, lease, or sell the DTI System or any portion thereof to any person or entity; provided, however, DTI shall not assign the rights granted to DTI in this Agreement to any person or entity without the written approval from ODOT and OTA.

## ARTICLE 4

### NONEXCLUSIVITY

The license granted by the Agencies under this Agreement, with respect to the use by DTI of the Approved System Segments, shall be a nonexclusive license. Each Agency shall continue to use its respective Rights-of-Way and shall be permitted to grant other and additional rights of use, licenses of use or occupation in its respective Rights-of-Way by one or more persons or entities; provided, however, that any right of use, license of use or occupation hereafter granted by either Agency in its respective Rights-of-Way shall not interfere with, obstruct or impair the license granted to DTI under this Agreement.

## ARTICLE 5

### **ROUTE DESIGNATION, INSPECTION, SURVEYS** **WORKING DRAWINGS, APPROVED PLANS** **AND SCHEDULES**

**5.1 Agency Information.** To facilitate DTI's planning of the route within the Approved System Segments, each Agency shall allow DTI to view, at the Agency's principal location, available Maps, charts, engineering rights-of-way, steam tunnels, pipeline documents and other engineering data and documentation pertaining to the Approved System Segments and the physical condition thereof, including the location and nature of all power stations, substations and other improvements, as well as all relevant engineering data and plans relating thereto. DTI may request and obtain, at its sole cost and expense, copies of such information. Each Agency shall allow DTI to view, at the Agency's principal location, available title documentation with respect to the Approved System Segments and/or restrictions on the license to use and to occupy the same for the purposes intended by this Agreement. DTI may request, at its sole cost and expense, copies of such title documentation; provided, however, that the availability of such title documentation to DTI shall not alter, affect or diminish the Agencies' warranties to DTI with respect to the Rights-of-Way. Each Agency shall make available to DTI, as soon as practicable, any relevant available information on pending highway, interstate or turnpike relocation or improvement projects by an Agency along the Approved System Segments. All requested copies of the documents referred to above pertaining to the Approved System Segments, including but not limited to title documentation, shall be provided by each Agency to DTI at a cost that does not exceed the actual cost of reproduction incurred by the Agency, plus reasonable overhead expense, if any.

**5.2 Joint Inspection and Surveys by DTI.** Each Agency agrees to participate with DTI or its agents in a joint inspection of the Approved System Segments situated within its Rights-of-Way prior to commencement of construction for the purpose of identifying problem areas and defining the final route for the FOC. Agency personnel accompanying DTI on the inspection shall have the knowledge and authority to generally guide the detailed routing in a manner to minimize interference with Agency operations. DTI shall, at its sole cost and expense, survey and submit the preliminary route to the appropriate Agency marked on a Map. Following each submission of the preliminary route, such Agency shall approve the same in whole or in part or raise any objections thereto, which objections shall be stated in writing and in reasonable detail and include a statement of the necessary modifications required to obtain approval. Upon receipt of any Agency objections to the preliminary route, DTI may modify the proposed route with respect to which such objections were noted by making appropriate changes thereto and resubmit the same to the Agency for its approval or objection as aforesaid. Approval of the preliminary route by the Agencies and DTI shall serve as the basis for DTI to initiate formal engineering to design the detailed route and construction plan. DTI shall have no obligation under this Agreement to initiate engineering until the Agencies and DTI have approved the preliminary route for the FOC. In the event that DTI and the Agencies are unable to agree on the preliminary route, as aforesaid, DTI shall have the right to terminate this Agreement by giving written notice of termination to each Agency.

**5.3 Preparation of Working Drawings.** DTI shall, at its sole cost and expense, prepare and submit to the appropriate Agency construction plans ("Working Drawings") for construction of the Telecommunications System on the Approved System Segments. Following each submission of the Working Drawings, the Agency shall approve the same in whole or in part or raise any objections thereto, which objections shall be stated in writing and in detail and include a statement of the necessary modifications required to obtain approval. Upon receipt of any Agency objections to the Working Drawings, DTI shall correct the Working Drawings with respect to which such objections were noted by making appropriate changes thereto and resubmit the same to the Agency for its approval or objection as aforesaid. The approved Working Drawings are hereinafter referred to as the "Approved Plans." DTI shall have no obligation under this Agreement to commence construction or installation of the FOC, Agency Conduit or the Agency Open Appearances until the Agencies and DTI have approved the Working Drawings. In the event that DTI and the Agencies are unable to agree on the Working Drawings, as aforesaid, DTI shall have the right to terminate this Agreement by giving written notice of termination to each Agency.

**5.4 Changes to Approved Plans.**

a) During the initial construction, DTI may make changes in its work hereunder, consisting of modifications or other changes within the general scope of this Agreement (a "Change"); provided, however, that (i) any Change in the route of the FOC which is outside the perimeter of the Approved System Segment, (ii) any additional excavation, or (iii) any relocation of a Regenerator Site shall, in any such event, be subject to the review and approval of the Agency that approved the Approved Plans.

b) When DTI becomes aware of a Change for which the consent of an Agency is required hereunder, DTI shall, at its sole cost and expense, promptly prepare and submit to the appropriate Agency an explanation of the basis therefor, and shall inform the Agency whether such Change should result in an adjustment to the Approved Plans or any other provision of this Agreement. A written change order describing the Change, its effect, if any, on the Approved Plans and any other provision of this Agreement, which is affected, shall be entered into by the parties in order for the Change to be effective.

**5.5 Construction Schedule.** Upon approval by the Agencies of the Working Drawings, DTI may enter the Rights-of-Way for the purpose of commencing installation of the Telecommunications System. Prior to entry, DTI shall provide to the Agencies a schedule for construction activities, including estimated progress dates and locations.

## ARTICLE 6

### CONSTRUCTION OF SYSTEM

With respect to the Rights-of-Way granted to DTI in Section 2.1 of Article 2 of this Agreement for the construction and maintenance of the DTI System and with respect to the Rights-of-Way granted to DTI in Section 2.2 of Article 2 of this Agreement only for the purposes of installing Open Appearances, DTI agrees to the terms and conditions for constructing the DTI System identified in this Article 6 of this Agreement.

#### **6.1 Construction of System.**

a) DTI, at DTI's sole cost and expense, shall furnish all necessary materials, parts, components, equipment and structures to accomplish this Agreement. Any and all property constructed and/or installed by DTI, including all fiber optic cable, conduit, carrier pipe, repeaters, power sources and all other attachments (collectively, the "System Materials") shall be and remain at all times the property of DTI, and shall at no time be deemed to be the property of any Agency, regardless of the manner or method of attachment to or installation in, on, upon, over, under, across and through the Rights-of-Way.

#### **6.2 Conditions of Construction.**

6.2.1 Roadway. Where cable is buried near the edge of pavement, DTI shall take particular care to avoid damaging the pavement. All crossings under pavement, including but not limited to the main roadway, entry ramps, and exit ramps are to be bored and conduit installed, as approved by the appropriate Agency.

6.2.2 Construction Corridor. DTI shall be granted the use of a 24-foot wide construction corridor, where available, to be determined by the appropriate Agency, along the planned construction routes. Construction equipment must stay within this corridor unless unforeseen obstacles necessitate deviations.

#### **6.2.3 Temporary Installation Facilities.**

a) DTI shall maintain all temporary facilities, material and equipment in a safe and adequate manner and remove them with reasonable promptness upon completion of the work requiring their presence.

b) During construction of the Telecommunications System, DTI shall erect, at its expense, temporary fencing where reasonably required or deemed necessary by the Agency.

#### **6.2.4 Excavating, Trenching and Plowing.**

a) The use of explosives shall not be allowed without prior authorization of the Agency.



b) Damage to banks and ditches caused by the equipment shall be immediately repaired to the satisfaction of the Agency.

c) Conduit/Cable trenching and plowing shall consist of a single trench or cut. The minimum depth of the trench or cut on ODOT Rights-of-Way shall be in accordance with ODOT standards. The trench or cut shall be neat and clean cut without disturbing any of the adjacent soil or ground cover. The FOC must be placed in pipe or conduit as approved by ODOT.

d) DTI shall promptly repair any damage to fences, lawns, trees, shrubbery and any other property damaged during construction.

**6.2.5 Boring.** The pavement shall not be disturbed and the location of boring and pushing pits are subject to approval of the appropriate Agency. Excessive use of water such that pavement might be undermined or subgrade softened shall not be permitted. The FOC crossing under roadways shall be at a location and depth as determined by state or local conditions, laws, regulations or orders of public authorities and shall be encased in pipe or conduit as approved by the appropriate Agency.

**6.2.6 Vaults and Pull Boxes.** The tops of the vault and pull boxes are to be constructed in such a manner that the tops are below grade, unless otherwise specified by the Agencies. The locations of vault and pull boxes are subject to approval of the appropriate Agency.

**6.3 Completion of Construction and Installation.** All work on the Approved System Segments shall be completed within 365 calendar days following the signing of this agreement.

**6.4 Standards and Warranty.** Any and all work by DTI, its contractors or agents shall be done in a good and workmanlike manner and so as not to interfere with any of the Agency operations. All installations must meet or exceed applicable standards and specifications of the State of Oklahoma and the United States of America in effect at that time and shall further be in compliance with all existing federal, state or local laws, ordinances and regulations and DTI, at its expense, shall obtain all permits and approvals required to implement the work required to be performed by it under this Agreement. In no case shall any part of the Telecommunications System be located in a manner that will interfere with any operations of the Agency, its existing permits, licenses or lessees.

**6.5 DTI License to Attach.** With prior written approval from the appropriate Agency, DTI may use an Agency's available cable conduit, bridge attachments and similar facilities in its installation and construction of the Telecommunications System, subject to terms and conditions that maybe imposed by the Agency.

**6.6 Other Public Utilities.** The FOC crossing over or under other existing public utilities shall be located and installed in accordance with local conditions, laws, orders of public authorities, and such requirements as may be stipulated by the public authority. If in the conduct of such work, any changes or alterations in pipelines, sewers, drains, conduits, fences, power, signal or communication lines or other utilities are necessary (either temporary or permanent), such changes shall be made at DTI's sole cost and expense.

**6.7    Restoration of Rights-of-Way.**    Upon completion of the installation or any replacement, repair or relocation of the Telecommunications System, DTI shall promptly return the ground to the same condition to that which existed prior to such work, in a manner satisfactory to the affected Agency's Representative.

**6.8    Delivery of As-Built Drawings.**    Within 90 days after completion of the installation of the Telecommunications System on each Approved System Segment, DTI shall, at its sole cost and expense, prepare and submit to each Agency "as-built" prints showing the location of the Telecommunications System within such Agency's Rights-of-Way. DTI will submit to each Agency three copies of the "as-built" prints. DTI will submit to each Agency all of the "as-builts" in an Autocad DWG format.

## ARTICLE 7

### PERMITS

**7.1 General Responsibilities.** DTI, at its sole cost and expense, shall secure and maintain in effect all federal, state, and local permits and licenses required for the design, construction, installation, repair, maintenance and operation of the Telecommunications System, including, without limitation, zoning, building, health, environmental or communication permits or licenses, and DTI shall indemnify and hold harmless the Agencies against any loss, cost or expense therefor and against any fines or penalties that may be levied for failure to procure or to comply with such permits or licenses as well as any remedial cost to cure violations thereof. Each Agency agrees to cooperate with DTI in securing on a timely basis all necessary approvals, permits and licenses from all governmental authorities and/or other parties having jurisdiction or approval rights in respect of the use and occupation of the Rights-of-Way. If DTI, after reasonable effort and diligence, is unable to obtain all of the necessary permits and licenses from federal, state and local government authorities for the design, construction, installation or operation of the Telecommunications System on any Approved System Segment, DTI may terminate, at the option of DTI, the obligations of DTI under this Agreement with regard to the design, construction, installation or operation of the Telecommunications System on such Approved System Segment by giving written notice thereof to the Agencies. The parties acknowledge and agree that the exercise of "reasonable effort and diligence" by DTI with respect to any required permit or license, as such phrase is used herein, shall not require that DTI (a) commence or prosecute any litigation or any administrative proceeding of an adversarial nature in any court or before any administrative agency against any governmental authority or any other person or entity or (b) expend an amount for costs and expenses which is unreasonable when compared to the costs and expenses generally required to obtain a similar permit or license from a particular governmental authority. Any other term, condition or provision of this Agreement to the contrary notwithstanding, the Agencies and DTI acknowledge and expressly agree that this Agreement and the respective obligations of the parties hereunder are and shall be subject to the acquisition by DTI of all necessary permits, licenses, consents and approvals from the Agencies for the design, construction, installation and operation of the Telecommunications System on right-of-way owned or controlled by the Agencies, to the extent that the use of the Agencies owned or controlled right-of-way is contemplated or required by this Agreement, including but not limited to all controlled access highway right-of-way and all interstate highway right-of-way.

## **ARTICLE 8**

### **DTI's LICENSE TO ENTER**

The licenses granted to DTI in Section 2.1 of Article 2 of this Agreement and Section 2.2 of Article 2 of this Agreement shall include the license for DTI to enter the Rights-of-Way with its employees, agents and contractors in order to exercise DTI's license under this Agreement, subject to the following requirements:

**8.1 Notice Required.** Except for emergency situations, whenever DTI or its employees, agents or contractors desire to enter upon the Rights-of-Way in connection with any activities related to the Telecommunications System, DTI shall notify the Agency, in writing, forty-eight (48) hours in advance and the notice must explain the scope and estimated duration of the anticipated entry. DTI shall receive written approval from the Agency's Representative prior to entry. If such scope and duration changes, additional notice shall be given and approval solicited.

**8.2 Emergency Situations.** In the event of any emergency impacting upon the Telecommunications System, or any portion thereof, DTI shall verbally or by facsimile give the appropriate Agency's Representative advance notice prior to entry upon the affected portion of the Rights-of-Way.

**8.3 Entry on the Turnpikes.** Ingress and egress to the Oklahoma Turnpike System shall be at the prevailing OTA rates.

## **ARTICLE 9**

### **FACILITY LOCATION SIGNS**

DTI, at its sole cost and expense, shall furnish, erect and thereafter maintain signs identifying all DTI underground facilities. Such signs shall be placed along the outermost Right-of-way lines in accordance with industry standards of the telecommunications industry and as approved by the Agency's Representative.

## ARTICLE 10

### MAINTENANCE OF SYSTEM

**10.1 General Maintenance.** Upon completion of the Telecommunications System and during the term hereof and each renewal term hereof, DTI shall, at its sole cost and expense, be responsible for the maintenance and repair of the Telecommunications System including replacement of individual Fibers and any maintenance as is necessary for the operation of the Telecommunications System; provided, however, if any Agency Fibers are damaged or should require repair or replacement as a result of (a) damage caused during installation or maintenance of the electronics on the Agency Fibers, (b) any intentional misconduct by or on the part of an Agency or any agent, servant or employee of an Agency or (c) any defect in or any malfunction of any electronics connected to the Agency Fibers constituting a part of the Agency System, DTI shall have no obligation to repair or replace the damaged Agency Fibers and the Agencies shall have no right to use the damaged Agency Fibers, unless the Agencies agree in writing to reimburse DTI the reasonable costs of repairing or replacing the damaged Agency Fibers. DTI may, at its option, subcontract for maintenance and restoration services hereunder.

**10.2 Agency Maintenance.** Each Agency agrees to cooperate with DTI to restore damaged or malfunctioning portion(s) of the Telecommunications System as soon as reasonably possible. Each Agency acknowledges the critical importance to DTI of the uninterrupted operation of the DTI System, and to each Agency the uninterrupted operation of the Agency System, and DTI agrees to arrive at the site within four hours after receiving notice of the existence of a problem.

**10.3 Certain Notices to DTI.** Each Agency will use its best efforts to give forty-eight hours prior notice to DTI if the Agency has knowledge that any person will be digging or trenching on any part of the Rights-of-Way within thirty feet of the FOC; provided, however, that neither Agency shall be responsible or liable to DTI or any other person for any loss, injury or damage caused by or resulting from any failure to give such forty-eight hour notice or any other prior notice; and, provided further, that DTI shall not be responsible or liable to the Agencies or any other person for any loss, injury or damage caused by or resulting from any failure to act on such notice given by either Agency.

## ARTICLE 11

### DTI UTILITY REQUIREMENTS

At each Regenerator Site, DTI may have the requirement for utilities such as auxiliary and primary power sources. If the installation of such utilities was omitted from the Working Drawings, and thereby not approved by the appropriate Agency, the installation of such utilities and route of access shall be subject to approval of the Agency's Representative.

## **ARTICLE 12**

### **RELOCATION**

#### **12.1 Relocation.**

a) Subsequent to initial construction of the Telecommunications System, if DTI determines that the Telecommunications System or the location thereof must be changed or altered within the Approved System Segments because of DTI operations or planned operations, or DTI desires to renew, replace, repair or alter any of its structures, properties, facilities or appurtenances or to construct new ones, DTI shall, at its sole cost and expense, promptly submit such plans, in writing, to the appropriate Agency. Only upon written consent by the appropriate Agency shall DTI proceed with such plans. The Agency may deny such request for changes or alteration without cause. If such plans are approved by the Agency, DTI, at its sole cost and expense, shall protect or move the affected System Materials in a manner satisfactory to the Agency's Representative as soon as reasonably practicable.

b) If an Agency determines that any part of the Telecommunications System or the location thereof must be changed or altered because of Agency operations or planned operations, or an Agency desires to renew, replace, repair or alter any of its bridges, culverts, structures, roads, properties, facilities or appurtenances or to construct new ones, such Agency shall notify DTI of such plans. DTI, at DTI's expense, shall protect or move the affected parts of the Telecommunications System in a manner satisfactory to the Agency's Representative as soon as reasonably practicable.

## ARTICLE 13

### TRAFFIC REGULATIONS

**13.1 Access.** All use of the Rights-of-Way shall be designed, made, and maintained in accordance with Chapter IV of the current "Manual on Uniform Traffic Control Devices: U.S. Department of Transportation" and Oklahoma Department of Transportation Standard Specifications, Edition of 1988 and any subsequent revisions. It is agreed upon that DTI shall not permit its vehicles and personnel to stop in the traffic lanes, center medians or paved shoulders of the highways, interstates, or turnpikes.

**13.2 Traffic Area.** DTI shall keep traffic lanes, center medians, paved shoulders or other traffic areas free of excavated material, installation equipment, conduit, and other materials and equipment unless the traffic areas have been appropriately marked and closed, which such closings must be approved, in advance, by the appropriate Agency.

**13.3 Traffic Control.** DTI shall be responsible for the placement and cost of all traffic control devices, required by the Agency, and shall comply with the current manual of Uniform Traffic Control Devices and Oklahoma Department of Transportation Standard Specifications, Edition of 1988 and any subsequent revisions.

**13.4 Highway Safety.** DTI shall operate to avoid, to the extent practicable, actions that could endanger the Telecommunications System or the operation of an Agency. DTI shall use all precautions to not interfere with Agency operations in the Rights-of-Way. An Agency may, at its option, request that employees, agents and contractors of DTI who are or will be involved in the engineering, construction, installation, operation or maintenance of the Telecommunications System be trained in highway safety matters via courses or materials to be offered or provided by the Agency at the cost of the Agency.

## ARTICLE 14

### INSURANCE

**14.1 Required Coverage.** Throughout the term of this Agreement and each renewal term hereof:

a) DTI shall procure and maintain in force, at its own cost and expense, Commercial General Liability insurance, including Automobile/Vehicle Liability for owned non-owned and hired automobiles, covering liability assumed by DTI under this Agreement, including a contractual liability coverage endorsement referring to this Agreement, coverage for contractors, premises operations, explosion, collapse and underground hazard, products liability, completed operations, personal and bodily injury, and broad form commercial general property damage, with a combined single limit of not less than \$10,000,000 for bodily and personal injury (including death) and property damage per occurrence.

b) DTI shall also procure and maintain in force Worker's Compensation Insurance in compliance with statutory requirements and with statutory limits, including an "All States" endorsement, and Employer's Liability Insurance with limits of not less than \$1,000,000.

**14.2 No Waiver of Liability.** The maintenance of the insurance hereinabove specified shall not limit DTI's liability under this Agreement, but shall be additional security therefor.

**14.3 General Conditions.**

a) All insurance required hereunder shall be effected by valid and enforceable policies issued by insurers licensed to do business in the State of Oklahoma.

b) To the extent reasonably obtainable, all the policies required hereunder shall contain agreements by the insurers that (a) no act or omission to act by an additional insured shall impair or affect the rights of the insured to receive and collect the proceeds of such policy, and (b) except in respect of cancellation for non-payment of premium, such policies shall not be canceled or materially changed upon less than 30 days prior written notice to the Agencies.

c) Prior to commencing work hereunder on any Approved System Segment, and at any other time upon the request of an Agency, DTI shall furnish to the requesting Agency certificates of insurance or other evidence thereof attesting that the insurance required under Article 14 of this Agreement is in effect.

d) Nothing in Article 14 of this Agreement shall be construed to prevent DTI from satisfying its insurance obligations pursuant to this Agreement under a blanket policy or policies, which meets or exceeds the requirements hereof.



## ARTICLE 15

### LIENS AND ENCUMBRANCES

**15.1 Liens and Encumbrances.** DTI shall not permit the creation of any mortgage, pledge, security, interest, lien or encumbrance on or pertaining to the Rights-of-Way or any other property or rights of the Agencies, including without limitation tax liens or liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Telecommunications System; provided, however, that the existence of such liens or encumbrances shall not constitute a violation of this sentence if payment with respect thereto is not yet due and payable; and provided further that DTI may, after written notice to the Agencies, contest the same or the validity thereof in good faith by appropriate proceedings which shall operate to prevent the enforcement of such lien or encumbrance so contested against any property or rights of an Agency. Nothing in this Agreement shall prevent or prohibit DTI from financing the construction and installation of the Telecommunications System with loans from one or more lenders on terms satisfactory to DTI or prevent or prohibit DTI from securing the repayment of such loans with any mortgage, security agreement or other security document creating one or more consensual liens or security interests in or with respect to the DTI System and the licenses of DTI under this Agreement, including but not limited to the nonexclusive license of DTI to use the Approved System Segments for the purposes of this Agreement; provided, however, that any such lien or security interest shall expressly exclude and shall not encumber the Agency System or any part of the Agency System, during the term of this Agreement and each renewal term hereof, the Rights-of-Way or any other rights or property of the Agencies hereunder.

**15.2 Ownership of DTI FOC and Conduit.** Nothing in this Agreement shall be deemed to give, and each Agency hereby expressly waives any claim of, ownership in any part of the FOC or conduit installed by DTI. Each Agency hereby agrees that no portion of the FOC or conduit installed by DTI shall be or become subject to or collateral under any mortgages, bonds or other indentures of such Agency.

## ARTICLE 16

### TERM OF AGREEMENT

**16.1 Term of Agreement.** The term of this Agreement shall commence at 12:01 a.m. on the Effective Date hereof and shall terminate at 12:01 a.m. on the twentieth anniversary of the Effective Date, unless renewed pursuant to Paragraph 16.2 hereof or sooner terminated pursuant to Paragraph 16.3 hereof. Upon completion of the term of this Agreement and each renewal term hereof the ownership of the FOC, conduit, Open Appearances, and Agency System shall immediately and automatically transfer to the Agencies.

**16.2 Renewal.** DTI shall have the option to renew this Agreement for two additional 5-year terms. The first renewal shall commence at 12:01 a.m. on the twentieth anniversary of the Effective Date and the second renewal shall commence at 12:01 a.m. on the twenty-fifth anniversary of the Effective Date; provided, however, that the right to renew shall be available to DTI only if DTI is not in default under any of the provisions of this Agreement as of the beginning date of each renewal term. Each option shall be exercisable by DTI giving written notice of extension to the Agencies 90 days prior to the end of the term or renewal term, and each renewal term shall be on the same terms and conditions as set forth herein except this option to renew.

**16.3 Termination.** This Agreement shall terminate upon the happening of any of the following events;

a) Complete abandonment in place of the Telecommunications System by DTI. At such time and in such event, the ownership of the Telecommunications System shall transfer to the Agencies.

b) Written mutual agreement of the parties hereto.

c) Breach, pursuant to Section 17.1 of Article 17 of this Agreement.

d) In the event of mutual termination by the parties hereto, DTI shall, at DTI's sole cost and expense, at the option of the appropriate Agency, either remove DTI facilities and restore the Approved System Segments to a condition and in a manner satisfactory to the Agency or abandon the same in place.

**16.4 Effect on Obligations.** Termination of this Agreement pursuant to Article 16 of this Agreement shall terminate all obligations of the parties hereunder and this Agreement shall become void and have no effect without any liability on the part of any party, except for the obligations under Article 21 of this Agreement.

**16.5 Partial Abandonment.** Upon partial abandonment in place of the Telecommunications System by DTI the ownership of such abandoned segments of ~~the~~ Telecommunications System shall transfer to the Agencies.

## ARTICLE 17

### **BREACH, REMEDIES**

#### **17.1 Breach.**

a) In the event of a Breach of this Agreement by either party, DTI and the Agencies each agree that neither shall proceed against the other by litigation before the offending party has had written notice of and reasonable time, not to exceed 30 calendar days, to respond and cure such Breach or defect; provided, however, neither party shall be required to give the other time to respond and cure if any such delay will cause irreparable harm.

b) For purposes of this Article, any material noncompliance or series of regularly repeated noncompliance events which individually might be considered immaterial shall constitute a Breach by either party.

**17.2 Remedies.** Remedies available to each party upon the occurrence of a Breach hereunder shall include: 1) specific performance in equity; and/or 2) litigation for damages and costs; and/or 3) termination.

a) Any waiver by any party at any time of any of its rights or licenses as to anything herein contained shall not be deemed to be a waiver of any Breach of covenant or other matter subsequently occurring.

## ARTICLE 18

### **REPRESENTATIONS AND WARRANTIES**

**18.1 Representations of DTI.** DTI represents and warrants to the Agencies that (a) it has full right and authority, including any requisite corporate, governmental and third party approvals, to enter into and to perform its respective obligations under this Agreement; (b) the execution of this Agreement does not violate its charter, by-laws or any law, regulation or agreement by which it is bound or to which it is subject; and (c) no litigation or governmental proceeding is pending or, to the knowledge of DTI, is threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or the rights of the parties hereunder.

**18.2 Representations of Agencies.** Each Agency represents to DTI that (a) it has full right and authority to enter into and perform its respective obligations under this Agreement; (b) the execution of this Agreement does not violate (i) its charter or by-laws, (ii) any rule, order or regulation applicable to such Agency which has not been waived, or (iii) to its knowledge, without having conducted any independent investigation, any license, permit, property interest conveyance, franchise or right-of-way which may adversely affect DTI's use of the Rights-of-Way or its right to grant the privileges herein provide for; (c) no litigation or government action or proceeding is pending or, to its knowledge threatened, which might adversely affect this Agreement, the transactions contemplated herein or the rights of the parties hereunder; and (d) to its knowledge, without having conducted any independent investigation, the Agencies collectively own all requisite right, title and interest (by fee, license, grant or other interest) in and to the Rights-of-Way, free and clear of any applicable lien, charge, mortgage, pledge, security interest, restrictions or other encumbrance of any kind, in order to grant DTI such privileges and to perform all of their other obligations under this Agreement.

## **ARTICLE 19**

### **RECORDING, TAXES AND OTHER CHARGES**

DTI agrees that if it is determined by any state or local government authority that the sale, acquisition, license, grant, transfer or disposition from the Agencies to DTI of any part or portion of the property or rights herein described requires the payment of any tax, (including sales or use tax) under any state or federal statute, regulation or rule, DTI shall pay the same, plus any penalty or interest thereon, directly to said taxing authority and shall hold the Agencies harmless therefrom. DTI shall pay all annual or periodic taxes levied or assessed upon the DTI System or on account of the existence or use of the DTI System, and shall indemnify the Agencies against the payment thereof.

## **ARTICLE 20**

### **INDEPENDENT CONTRACTOR STATUS**

The Agencies and DTI acknowledge and agree that they reserve no control whatsoever over the employment, discharge, compensation of or services rendered by the employees or contractors of the other party, notwithstanding the ability of the parties under this Agreement to exercise certain rights to enforce the various standards and specifications agreed upon pursuant to this Agreement. Nothing in this Agreement shall be construed as inconsistent with the foregoing independent contractor status or relationship or as creating or implying any partnership or joint venture between DTI and an Agency.

## ARTICLE 21

### LIABILITY, INDEMNITY

#### **21.1 Liability and Indemnity.**

a) DTI, as a further consideration and as a condition without which this Agreement would not have been executed and delivered by the Agencies, agrees to indemnify, defend and save harmless the Agencies, their respective officers, employees and agents and to assume all responsibility and liability for death of, or injury to any persons, including but not limited to, officers, employees, agents, patrons, invitees or licensees of the parties hereto and for loss, damage or injury to any property, including but not limited to, that belonging to the Agencies, together with all liability for any expenses, attorneys' fees and costs incurred or sustained by the Agencies, arising from or growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from any neglect, negligence by or on the part of DTI, its officers, employees or agents in connection with the grant or exercise of the privileges hereunder to DTI or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of the Telecommunications System or of any structure incident thereto or any activity conducted by or on behalf of DTI on or in the vicinity of the Rights-of-Way.

b) Anything in this Agreement to the contrary notwithstanding, DTI shall release and indemnify and save harmless the Agencies, their respective officers, employees and agents, for any damage to the property of DTI, including the Telecommunications System or any of DTI's facilities and all appurtenances thereto or property of DTI's officers, employees, agents, contractors or subcontractors, arising from or growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from the grant or exercise of the privileges hereunder to DTI or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of any structure incident thereto or from any activity conducted by or on behalf of DTI or the Agencies on or in the vicinity of the Rights-of-Way; provided, however, that this release and indemnification shall not release, indemnify or otherwise protect the Agencies from any intentional misconduct by or on the part of either Agency or its officers, employees or agents. The Agencies make no representations concerning the structural integrity or suitability of any of their respective property or facilities to be used by DTI hereunder and DTI accepts such property and facilities in their present "as-is" condition and it is expressly understood that DTI uses said facilities at its own risk.

c) At the election of the Agencies, DTI, upon receipt of notice to that effect, shall assume or join in the defense of any claim based on allegations purporting to bring said claim within the coverage of this Article.

## ARTICLE 22

### ENVIRONMENTAL MATTERS

**22.1 Notice Requirements.** Upon learning of any hazardous or toxic waste conditions within an Approved System Segment or any other portion of the Rights-of-Way which would adversely affect or interfere with the exercise of DTI's licenses hereunder, each party agrees to promptly inform the other of the existence of such hazardous or toxic waste condition.

**22.2 Alternate Locations.** Upon learning of any such hazardous or toxic waste condition on Rights-of-Way areas within which the Telecommunications System is intended to be or is located, the applicable Agency shall, to the extent available to it, offer DTI, without payment of any additional consideration therefor, alternate contiguous areas within which the Telecommunications System may be relocated to avoid such hazardous or toxic waste areas.



## ARTICLE 23

### MISCELLANEOUS

**23.1 Entire Agreement.** This Agreement sets forth the entire agreement between the parties with regard to the subject matter of this Agreement. All agreements, covenants, representations and warranties, express or implied, oral and written, of the parties with regard to the subject matter of this Agreement are contained in this Agreement and the documents referred to or implementing the provisions of this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by either party to the other with respect to the subject matter of this Agreement. This is an integrated agreement.

**23.2 Governing Law and Choice of Forum.** The validity, construction and performance of this Agreement, and any action arising out of or relating to this Agreement shall be governed by the laws, without regard to the Laws as to choice or conflict of laws, of the State of Oklahoma.

**23.3 Waiver and Amendment.** This Agreement may be amended, supplemented, modified and/or rescinded only through an express written instrument signed by all parties or their respective successors and permitted assigns.

**23.4 Assignment.** The obligations of the parties under this Agreement shall not be assigned without the written approval of the other parties.

**23.5 Successors and Assigns.** Each of the terms, provisions and obligations of this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties and their respective legal representative, successors and permitted assigns.

**23.6 Notices.**

a) Unless otherwise provided herein, all notices and communications concerning this Agreement shall be addressed to the other party as follows:

If to DTI:

Digital Teleport, Inc.  
8112 Maryland Ave., 4<sup>th</sup> Floor  
St. Louis, Missouri 63105  
Attn: President

If to the Agencies:

Oklahoma Turnpike Authority  
3500 Martin Luther King Ave.  
Oklahoma City, OK 73111  
Attn: Director of Information Technology

or at such other address as may be designated in writing to the other party.

b) Unless otherwise provided herein, notices shall be sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, and shall be deemed served or delivered to the addressee or its office on the date of return receipt acknowledgment or, if postal claim notices are given, on the date of its return marked "unclaimed,"; provided, however, that upon receipt of a returned notice marked "unclaimed," the sending party shall make reasonable effort to contact and notify the other party by telephone.

### **23.7 Severability.**

a) This Agreement is executed by all parties under current interpretations of applicable federal, state or local statute, ordinance, law or regulations.

b) Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other separate division or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall have no effect upon the validity or enforceability of each and every other separate division herein contained, or any other combination thereof.

**23.8 Further Action.** Each party agrees to perform any further acts and to execute and deliver any other documents that may be reasonably necessary to effect the provisions of this Agreement.

**23.9 Warranty of Authority.** Each of the individuals signing this Agreement on behalf of a party warrants and represents that such individual is duly authorized and empowered to enter into this Agreement and bind such party.

**23.10 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

DIGITAL TELEPORT, INC.

By:

Richard D. Weinstein

Title: President

AS TO FORM

OKLAHOMA TURNPIKE AUTHORITY

By:

Neal G. McCall

Title: \_\_\_\_\_

Thomas H. Hillman Jr.  
OTA Legal Counsel

AS TO FORM

OKLAHOMA DEPARTMENT OF  
TRANSPORTATION

By:

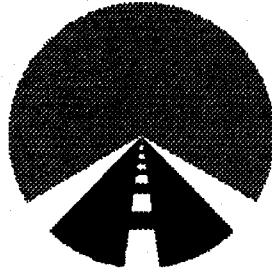
Forrest Adams

Title:

7/13/99

Forrest Adams  
ODOT Legal Counsel

**DIGITAL TELEPORT  
TELECOMMUNICATIONS AGREEMENT #2  
OKLAHOMA TRANSPORTATION AUTHORITY**



**OKLAHOMA DEPARTMENT OF  
TRANSPORTATION**



**DIGITAL TELEPORT, INC.**



**REDLINE 1/31/2001**

## **DIGITAL TELEPORT TELECOMMUNICATIONS AGREEMENT #2**

THIS DIGITAL TELEPORT TELECOMMUNICATIONS AGREEMENT #2 (this "Agreement") is made and entered into as of this \_\_\_\_th day of \_\_\_\_\_, 2001 (the "Effective Date"), by and among the Oklahoma Transportation Authority, an instrumentality of the State of Oklahoma ("OTA"), the Oklahoma Department of Transportation, an agency of the State of Oklahoma ("ODOT"), and Digital Teleport, Inc., a Missouri Corporation ("DTI"). OTA and ODOT are sometimes individually referred to herein as an "Agency" and collectively as the "Agencies".

### **RECITALS**

- A. Each Agency is the owner of certain Rights-of-Way (as hereinafter defined), by fee, license, grant or other interest, within certain real property in the State of Oklahoma upon which it operates its facilities.
- B. DTI desires to acquire from each Agency certain nonexclusive licenses in, on, upon, over, under, across and through certain portions of each Agency's Rights-of-Way (as hereinafter defined), as necessary and convenient to permit and enable DTI to operate, maintain, and repair the Telecommunications System (as hereinafter defined).
- C. The Agencies desire to acquire from DTI certain rights and privileges in and with respect to certain Dark Fibers (as hereinafter defined) which shall be installed by DTI on certain portions of the Agencies' Rights-of-Way (as hereinafter defined) concurrently with the installation of the Telecommunications System (as hereinafter defined).
- D. In consideration of the grant of such nonexclusive licenses by each Agency, DTI hereby grants to each Agency, on the terms and subject to the conditions and limitations of this Agreement, an exclusive right to use the said Dark Fibers (as hereinafter defined).
- E. In consideration of the grant of such rights and privileges by DTI, each Agency hereby grants to DTI, on the terms and subject to the conditions and limitations of this Agreement, a nonexclusive license to use the said portions of the Agencies' Rights-of-Way (as hereinafter defined).
- F. In order to effectuate the intent of the forgoing, DTI and the Agencies desire to enter into a contractual relationship, realizing that close cooperation and good faith in the implementation of this Agreement are critical to the success of their respective operations, and each will work diligently to achieve their common objectives.

# AGREEMENT

IN CONSIDERATION OF THE FOREGOING RECITALS AND THE RESPECTIVE COVENANTS, AGREEMENTS, REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

## ARTICLE 1

### DEFINITIONS

- 1.1. **Defined Terms**. Unless otherwise defined, capitalized terms used herein shall have the following meanings:
- 1.1.1. **"Agency's Representative"** shall mean the person or persons designated by each Agency to receive notices under this Agreement when any notice to an Agency's Representative is required by any term or provision of this Agreement. Each Agency may designate different representatives to receive notices for different purposes, as determined from time to time by each Agency; but each designated representative and each successor representative shall be identified by each Agency in a written notice to DTI.
  - 1.1.2. **"Breach"** shall mean the failure by either party to perform its obligations under this Agreement in the time and manner herein provided.
  - 1.1.3. **"Dark Fibers"** shall mean a single-mode optical fiber cable meeting the minimum specifications set forth in the Corning Optical Fiber product specifications PL1044, issued April 1996.
  - 1.1.4. **"FOC"** shall mean a cable consisting of a bundle of Dark Fibers, each of which is capable of transmitting messages modulated onto light waves, to be installed in an existing conduit already in place pursuant to DTI's separate agreement with Indian Nations Fiber optics, Inc.
  - 1.1.5. **"DTI System"** shall mean the telecommunications transmission system owned by DTI on, upon, over, under, across or through the Rights-of-Way (as hereinafter defined), including the FOC and such number of Regenerator Sites (as hereinafter defined) and all electronics and other equipment, which DTI deems appropriate to create a fiber optic communications transmission system; provided, however, that the DTI System shall not include any part of the ODOT System.
  - 1.1.6. **"Maps"** shall mean maps of the Rights-of-Way (as hereinafter defined) and plan and profile drawings, engineering and architectural data regarding bridges, terminals and other obstacles previously and hereafter compiled by an Agency pertaining to its Rights-of-Way (as hereinafter defined).

- 1.1.7. **“ODOT Fibers”** shall mean collectively the Dark Fibers identified and described in Section 3.1 of Article 3 of this Agreement that shall be made available by DTI for the exclusive use of the Agencies.
- 1.1.8. **“ODOT System”** shall mean collectively the ODOT Fibers, and ODOT Open Appearances (as hereinafter defined).
- 1.1.9. **“Regenerator Site”** shall mean a facility in which equipment is located which receives, regenerates and retransmits an opti/electronic telecommunications transmission signal, together with all attendant equipment and structures appurtenant thereto, including power sources.
- 1.1.10. **“Rights-of-Way”** shall mean the real property and rights thereto utilized by the Agencies for the highway, interstate and turnpike facilities described in Article 2 of this Agreement which are owned, operated, leased or controlled by the Agencies pursuant to existing grants, easements, leases, franchises, licenses or other agreements or arrangements. The nonexclusive use of the Rights-of-Way will be restricted to a four-foot wide strip, 2 feet on each side of a centerline, identified in the Working Plans (as hereinafter defined) and approved by the appropriate Agency.
- 1.1.11. **“Telecommunications System”** shall mean collectively the DTI System and the ODOT System.
- 1.2. **Other Defined Terms.** The following capitalized terms shall have the meanings given to them in the corresponding Articles set forth below:

<u>Terms</u>	<u>Section</u>
Agency	Introduction
Agencies	Introduction
Agreement	Introduction
Approved Plans	Section 5.3 of Article 5
Change	Section 5.4 of Article 5
Denver Regenerator Site	Section 3.2.5 of Article 3
DTI	Introduction
DTI Open Appearances	Section 2.1 of Article 2
Effective Date	Introduction
Guthrie Regenerator Site	Section 3.2.3 of Article 3
Lake Hefner Regenerator Site	Section 3.2.2 of Article 3
ODOT	Introduction
ODOT Open Appearances	Section 3.4 of Article 3
ODOT-Edmond	Section 2.4 of Article 2
ODOT-Edmond Fibers	Section 3.1.3 of Article 3
ODOT-I35	Section 2.3 of Article 2
ODOT-I35 Fibers	Section 3.1.2 of Article 3
ODOT-I40	Section 2.7 of Article 2

ODOT-I40 Fibers	Section 3.1.7 of Article 3
ODOT-I44	Section 2.8 of Article 2
ODOT-I44 Fibers	Section 3.1.6 of Article 3
ODOT-JKT Fibers	Section 3.1.4 of Article 3
ODOT-SH74	Section 2.6 of Article 2
ODOT-SH74 Fibers	Section 3.1.5 of Article 3
ODOT-SH300	Section 2.2 of Article 2
ODOT-SH300 Fibers	Section 3.1.1 of Article 3
OTA	Introduction
OTA-JKT	Section 2.5 of Article 2
Reno Regenerator Site	Section 3.2.1 of Article 3
System Materials	Section 6.1 of Article 6
Tonkawa Regenerator Site	Section 3.2.4 of Article 3
Working Drawings	Section 5.3 of Article 5

## ARTICLE 2

### GRANT OF LICENSES TO DTI

Each Agency hereby grants to DTI, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use certain Rights-of-Way for the following purposes consistent with the terms of this Agreement: to operate, maintain, and repair the DTI System; and, in connection therewith to operate, maintain, and repair the ODOT System. The grant of this nonexclusive license for certain Rights-of-Way hereinafter identified in Article 2 of this Agreement does not include the installation of any conduit or FOC; in such instances DTI will use only the conduit and FOC already in place at such locations pursuant to DTI's separate agreement with Indian Nations Fiberoptics, Inc. DTI hereby accepts the grant of such nonexclusive license from the Agencies for such purposes. The location and specifications of the Telecommunications System will be submitted in the Working Drawings and approved by the appropriate Agency.

- 2.1. DTI will be allowed to install an average of four buried structures per mile on the Rights-of-Way identified in Article 2 of this Agreement where the FOC can be assessed ("DTI Open Appearances"). DTI will not be allowed to exceed an average of four DTI Open Appearances per mile unless approved, in writing, by the appropriate Agency. DTI will be allowed to egress from such DTI Open Appearances only in a lateral direction with written approval by the appropriate Agency. Such written approval by the appropriate Agency shall not be unreasonably withheld. The Agencies agree to respond to DTI's request for a lateral build with reasonable promptness. The location and specifications of the DTI Open Appearances will be submitted in the Working Drawings and approved by the appropriate Agency.
- 2.2. ODOT hereby grants to DTI, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the Oklahoma-Kansas border, going south



on 44<sup>th</sup> street to State Road 300, then west on State Road 300 to the intersection of State Road 300 and Interstate 35 ("ODOT-SH300").

- 2.3. ODOT hereby grants to DTI, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of State Road 300 and Interstate 35, going south on Interstate 35 to the intersection of Interstate 35 and 2<sup>nd</sup> Street, Edmond, Oklahoma ("ODOT-I35").
- 2.4. ODOT hereby grants to DTI, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of Interstate 35 and 2<sup>nd</sup> Street, Edmond, Oklahoma, going south on Interstate 35 to the intersection of Interstate 35 and the John Kilpatrick Turnpike, Oklahoma City, Oklahoma ("ODOT-Edmond").
- 2.5. OTA hereby grants to DTI, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of Interstate 35 and the John Kilpatrick Turnpike, Oklahoma City, Oklahoma, going west on the John Kilpatrick Turnpike to the intersection of the John Kilpatrick Turnpike and State Highway 74, Oklahoma City, Oklahoma ("OTA-JKT").
- 2.6. ODOT hereby grants to DTI, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of John Kilpatrick Turnpike and State Highway 74, Oklahoma City, Oklahoma, going south on State Highway 74 to the intersection of State Highway 74 and Interstate 44, Oklahoma City, Oklahoma ("ODOT-SH74").
- 2.7. ODOT hereby grants to DTI, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of State Highway 74 and Interstate 44, Oklahoma City, Oklahoma, going south on Interstate 44 to the intersection of Interstate 44 and Interstate 40, Oklahoma City, Oklahoma ("ODOT-I44").
- 2.8. ODOT hereby grants to DTI, during the term of this Agreement and each renewal term hereof, a nonexclusive license to use Rights-of-Way beginning at the intersection of Interstate 44 and Interstate 40, Oklahoma City, Oklahoma, going east on Interstate 40 to the intersection of Interstate 40 and E.K. Gaylord, Oklahoma City, Oklahoma ("ODOT-I40").

### ARTICLE 3

#### GRANT OF RIGHTS TO THE AGENCIES

- 3.1. **ODOT Fibers.** DTI hereby grants to the Agencies, during the term of this Agreement and each renewal term hereof, as hereinafter specifically provided with respect to each Agency, an exclusive right to use certain Dark Fibers in the FOC in accordance with the terms of this Agreement. DTI will provide optical time-domain reflectometer readings on all ODOT Fibers to the Agencies within

30 days after the ODOT Fibers are made available to ODOT in accordance with the terms of this Agreement. DTI will provide all fiber optic splices with an average loss no greater than .1 db.

- 3.1.1. DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 16 Dark Fibers (the "ODOT-SH300 Fibers") along ODOT-SH300 in its entirety. DTI will perform the necessary splices and connections to provide an uninterrupted 16-fiber network using the ODOT-SH300 Fibers.
- 3.1.2. DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 16 Dark Fibers (the "ODOT-I35 Fibers") along ODOT-I35 in its entirety. DTI will splice the ODOT-SH300 Fibers to the ODOT-I35 Fibers as specified by ODOT. DTI will splice 32 fibers from the ODOT-I35 Fibers to a patch panel with FC connectors, to be provided by DTI, in the Tonkawa Regenerator Site (as hereinafter defined). DTI will splice 32 fibers from the ODOT-I35 Fibers to a patch panel with FC connectors, to be provided by DTI, in the Guthrie Regenerator Site (as hereinafter defined). DTI will perform the necessary splices and connections to provide an uninterrupted 16-fiber network using the ODOT-I35 Fibers.
- 3.1.3. DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 40 Dark Fibers (the "ODOT-Edmond Fibers") along ODOT-Edmond in its entirety. DTI will splice the ODOT-I35 Fibers to the ODOT-Edmond Fibers as specified by ODOT. DTI will perform the necessary splices and connections to provide an uninterrupted 40-fiber network using the ODOT-Edmond Fibers.
- 3.1.4. DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 40 Dark Fibers (the "ODOT-JKT Fibers") along OTA-JKT in its entirety. DTI will splice the ODOT-Edmond Fibers to the ODOT-JKT Fibers as specified by ODOT. DTI will perform the necessary splices and connections to provide an uninterrupted 40-fiber network using the ODOT-JKT Fibers.
- 3.1.5. DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 40 Dark Fibers (the "ODOT-SH74 Fibers") along ODOT-SH74 in its entirety. DTI will splice the ODOT-JKT Fibers to the ODOT-SH74 Fibers as specified by ODOT. DTI will perform the necessary splices and connections to provide an uninterrupted 40-fiber network using the ODOT-SH74 Fibers.
- 3.1.6. DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 40 Dark Fibers (the "ODOT-I44 Fibers") along ODOT-I44 in its entirety. DTI will splice the ODOT-SH74 Fibers to the ODOT-I44 Fibers as specified by ODOT. DTI will splice 80 fibers from the ODOT-SH74 Fibers to a patch panel with FC connectors, to be provided by DTI, in the Lake Hefner Regenerator Site (as hereinafter defined). DTI will perform the necessary splices and connections to provide an uninterrupted 40-fiber network using the ODOT-I44 Fibers.

3.1.7. DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 40 Dark Fibers (the "ODOT-I40 Fibers") along ODOT-I40 in its entirety. DTI will splice the ODOT-I44 Fibers to the ODOT-I40 Fibers as specified by ODOT. DTI will loop the ODOT-I44 Fibers into the ODOT facility located at the intersection of Interstate 40 and May Avenue, Oklahoma City, Oklahoma. DTI will perform the necessary splices and connections to provide an uninterrupted 40-fiber network using the ODOT-I40 Fibers. DTI will terminate the ODOT-I40 Fibers in a patch panel with FC connectors, to be provided by DTI, in the Reno Regenerator Site (as hereinafter defined) using one 1.25" conduit provided by ODOT from the intersection of Interstate 40 and E.K. Gaylord Avenue, Oklahoma City, Oklahoma to the Reno Regenerator Site (as hereinafter defined).

3.2. **Regenerator Sites.** DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof an exclusive right to use certain Regenerator Site facilities identified in Section 3.2.1, Section 3.2.2, Section 3.2.3, Section 3.2.4, and Section 3.2.5 of Article 3 of this Agreement. DTI will provide ODOT or its agents with unrestricted access to its space at the Regenerator Site facilities. ODOT will grant to DTI a nonexclusive right to use one approximately 50 foot by 50 foot portion of the Rights-of-Way at the locations identified in Section 3.2.1, Section 3.2.2, Section 3.2.3, Section 3.2.4, and Section 3.2.5 of Article 3 of this Agreement for construction of such Regenerator Site facilities. DTI will design, construct, install and maintain such Regenerator Sites. The exact size, construction materials, location and ingress and egress to such Regenerator Sites will be submitted in the Working Drawings and approved by ODOT prior to constructing such Regenerator Sites. DTI is responsible for all construction and maintenance costs including the buildings, driveways, drainage, utilities, fencing and insurance. ODOT is not responsible for any damages incurred to the buildings or DTI equipment located in such Regenerator Sites. ODOT may transfer it's use of such Regenerator Sites to any party for any other use.

3.2.1. **Reno Regenerator Site.** DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to utilize a 8' by 12' usable space in an environmentally conditioned building in the ODOT maintenance yard located on Reno Street approximately .3 miles west of the intersection of Interstate 40 and Interstate 235, Oklahoma City, Oklahoma ("Reno Regenerator Site"). DTI will provide uninterruptible 50 amp electrical power protected by a natural gas or diesel generator.

3.2.2. **Lake Hefner Regenerator Site.** DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to utilize a 8' by 10' usable space in an environmentally conditioned building at the intersection of State Highway 74 and Interstate 44, Oklahoma City, Oklahoma ("Lake Hefner Regenerator Site"). DTI will provide uninterruptible 25 amp electrical power protected by a natural gas or diesel generator.

3.2.3. **Guthrie Regenerator Site.** DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to utilize two rack spaces in the common collocation area of an environmentally conditioned building at the ODOT maintenance yard located on Interstate 35 approximately .5 miles north of the intersection of State Highway 105 and Interstate 35, Guthrie, Oklahoma ("Guthrie Regenerator Site").

DTI will provide uninterruptible 25 amp electrical power protected by a natural gas or diesel generator.

3.2.4. **Tonkawa Regenerator Site**. DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to utilize two rack spaces in the common collocation area of an environmentally conditioned building located on Interstate 35 at mile marker 113, north of the intersection of Fountain Head Road and Interstate 35 ("Tonkawa Regenerator Site"). DTI will provide uninterruptible 25 amp electrical power protected by a natural gas or diesel generator.

3.2.5. **Denver Regenerator Site**. DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to utilize a 8' by 10' usable space in an existing environmentally conditioned building located at the intersection of Denver Ave., and State Highway 75, Tulsa, Oklahoma ("Denver Regenerator Site"). DTI will provide uninterruptible 25 amp electrical power protected by a natural gas or diesel generator. DTI will splice 72 fibers from an existing hand hole located next to the Denver Regenerator Site to a patch panel with FC connectors, to be provided by DTI, in the Denver Regenerator Site. DTI will splice such 72 fibers to existing ODOT Dark Fibers in such hand hole.

3.3. **ODOT Open Appearances**. DTI hereby grants to the Agencies, during the term of this Agreement and each renewal term hereof, an exclusive right to use the ODOT Fibers pulled into existing hand holes, as specified by ODOT, already in place on certain Rights-of-Way pursuant to ODOT's separate agreement with Indian Nations Fiberoptics, Inc. ("ODOT Open Appearances"). DTI shall allow each Agency access to the ODOT Fibers at such ODOT Open Appearances; provided, however, that such access shall be subject to DTI supervision on not less than forty-eight (48) hours' prior notice to DTI. DTI shall provide a 100ft coil of the ODOT Fibers in the ODOT Open Appearances when requested by ODOT, in writing, during the term of this Agreement and each renewal hereof. DTI shall provide such 100ft coil in the ODOT Open Appearance within 8 weeks of the written request.

3.4. **Second FOC**. If DTI desires to install a second FOC in the conduit provided to DTI by a separate agreement with Indian Nations Fiberoptics, Inc., DTI shall, at its sole cost and expense, submit plans to the appropriate Agency for the installation of a second FOC. Only upon written consent by the appropriate Agency shall DTI proceed with such plans. The Agency may deny such request without cause. If such plans are approved by the Agency, DTI hereby grants to ODOT, during the term of this Agreement and each renewal term hereof, an exclusive right to use 12 Dark Fibers in the second FOC placed in the Rights-of-Way identified in Article 2 of this Agreement. In such event, DTI shall provide a 100ft coil of such Dark Fibers in the ODOT Open Appearances when requested by ODOT, in writing, during the term of this Agreement and each renewal hereof. DTI shall provide such 100ft coil of Dark Fibers in the ODOT Open Appearance within 8 weeks of the written request. DTI will perform the necessary splices and connections to provide an uninterrupted 12-fiber network using such additional Dark Fibers.

3.5. **Right to Use Fibers**. The Agencies shall each have an unrestricted right to use ~~their respective~~ the ODOT System for any lawful purpose without approval or consent from any of the other parties to this Agreement. The Agencies may donate, trade, barter, lease, or sell the ODOT System or any

portion thereof to any person or entity, including but not limited to, for-profit telecommunication providers for the purpose of transporting traffic.

- 3.6. **License to Use Fibers**. DTI shall have an unrestricted license to use the DTI System for any lawful purpose without approval or consent from any of the other parties to this Agreement. DTI may donate, trade, barter, lease, or sell the DTI System or any portion thereof to any person or entity; provided, however, DTI shall not assign the rights granted to DTI in this Agreement to any person or entity without written approval from the Agencies.

## ARTICLE 4

### **NONEXCLUSIVITY**

The license granted by the Agencies under this Agreement, with respect to the use by DTI of the Rights-of-Way, shall be a nonexclusive license. Each Agency shall continue to use its respective Rights-of-Way and shall be permitted to grant other and additional rights of use, licenses of use or occupation in its respective Rights-of-Way by one or more persons or entities; provided, however, that any right of use, license of use or occupation hereafter granted by either Agency in its respective Rights-of-Way shall not interfere with, obstruct or impair the license granted to DTI under this Agreement.

## ARTICLE 5

### **INSPECTIONS, SURVEYS, WORKING DRAWINGS, APPROVED PLANS AND SCHEDULES**

- 5.1. **Agency Information**. To facilitate DTI's planning of the Telecommunications System within the Rights-of-Way, each Agency shall allow DTI to view, at the Agency's principal location, available Maps, charts, engineering rights-of-way, steam tunnels, pipeline documents and other engineering data and documentation pertaining to the Rights-of-Way and the physical condition thereof, including the location and nature of all power stations, substations and other improvements, as well as all relevant engineering data and plans relating thereto. DTI may request and obtain, at its sole cost and expense, copies of such information. Each Agency shall allow DTI to view, at the Agency's principal location, available title documentation with respect to the Rights-of-Way and/or restrictions on the license to use and to occupy the same for the purposes intended by this Agreement. DTI may request, at its sole cost and expense, copies of such title documentation. Each Agency shall make available to DTI, as soon as practicable, any relevant available information on pending highway, interstate or turnpike relocation or improvement projects by an Agency along the Rights-of-Way. All requested copies of the documents referred to above pertaining to the Rights-of-Way, including but not limited to title documentation, shall be provided by each Agency to DTI at a cost that does not exceed the actual cost of reproduction incurred by the Agency, plus reasonable overhead expense, if any.

- 5.2. **Joint Inspection and Surveys by DTI.** Each Agency agrees to participate with DTI or its agents in a joint inspection of the Rights-of-Way prior to commencement of construction for the purpose of identifying problem areas and defining the exact location for components of the Telecommunications System. Agency personnel accompanying DTI on the inspection shall have the knowledge and authority to generally guide the planning in a manner to minimize interference with Agency operations.
- 5.3. **Preparation of Working Drawings.** DTI shall, at its sole cost and expense, prepare and submit to the appropriate Agency construction plans ("Working Drawings") for construction of the Telecommunications System on the Rights-of-Way. Following each submission of the Working Drawings, the Agency shall approve the same in whole or in part or raise any objections thereto, which objections shall be stated in writing and in detail and include a statement of the necessary modifications required to obtain approval. Upon receipt of any Agency objections to the Working Drawings, DTI shall correct the Working Drawings with respect to which such objections were noted by making appropriate changes thereto and resubmit the same to the Agency for its approval or objection as aforesaid. The approved Working Drawings are hereinafter referred to as the ("Approved Plans"). DTI shall have no obligation under this Agreement to commence construction or installation of the ODOT Open Appearances until the Agencies and DTI have approved the Working Drawings. In the event that DTI and the Agencies are unable to agree on the Working Drawings, as aforesaid, DTI shall have the right to terminate this Agreement by giving written notice of termination to each Agency.
- 5.4. **Changes to Approved Plans.** During the initial construction, DTI may make changes in its work hereunder, consisting of modifications or other changes within the general scope of this Agreement (a "Change"); provided, however, that (i) any Change in the route of the FOC, (ii) any additional excavation, or (iii) any relocation of a Regenerator Site shall, in any such event, be subject to the review and approval of the Agency that approved the Approved Plans. When DTI becomes aware of a Change for which the consent of an Agency is required hereunder, DTI shall, at its sole cost and expense, promptly prepare and submit to the appropriate Agency an explanation of the basis therefore, and shall inform the Agency whether such Change should result in an adjustment to the Approved Plans or any other provision of this Agreement. A written change order describing the Change, its effect, if any, on the Approved Plans and any other provision of this Agreement, which is affected, shall be entered into by the parties in order for the Change to be effective.
- 5.5. **Construction Schedule.** Upon approval by the Agencies of the Working Drawings, DTI may enter the Rights-of-Way for the purpose of commencing installation of the Telecommunications System. Prior to entry, DTI shall provide to the Agencies a schedule for construction activities, including estimated progress dates and locations.

## ARTICLE 6

### CONSTRUCTION OF SYSTEM

- 6.1. **Construction of System.** DTI, at DTI's sole cost and expense, shall furnish all necessary materials, parts, components, equipment and structures to accomplish this Agreement. Any and all property constructed and/or installed by DTI, including all repeaters, power sources and all other attachments (collectively, the "System Materials") shall be and remain at all times the property of DTI, and shall at no time be deemed to be the property of the Agencies, regardless of the manner or method of attachment to or installation in, on, upon, over, under, across and through the Rights-of-Way.
- 6.2. **Conditions of Construction.** When work is occurring near the edge of the pavement, DTI shall take particular care to avoid damaging the pavement. All crossings under pavement, including but not limited to the main roadway, entry ramps, and exit ramps are to be bored and conduit installed, as approved by the Agencies. DTI shall be granted the use of a 24-foot wide construction corridor, where available, to be determined by the respective Agency, along the Rights-of-Way. Construction equipment must stay within this corridor unless unforeseen obstacles necessitate deviations.
- 6.3. **Temporary Installation Facilities.** DTI shall maintain all temporary facilities, material and equipment in a safe and adequate manner and remove them with reasonable promptness upon completion of the work requiring their presence. During construction of the Telecommunications System, DTI shall erect, at its expense, temporary fencing where reasonably required or deemed necessary by the Agencies.
- 6.4. **Excavating.** The use of explosives shall not be allowed without prior written authorization from the Agency. Damage to banks and ditches caused by the equipment shall be immediately repaired to the satisfaction of the Agency. DTI shall not remove any trees without prior written authorization from the appropriate Agency. DTI shall promptly repair any damage to fences, lawns, trees, shrubbery and any other property damaged during construction.
- 6.5. **Boring.** In the event that it becomes necessary for DTI to perform any boring operations, written approval must be received from the appropriate Agency prior to the boring operation. In such event, the pavement shall not be disturbed and the location of boring and pushing pits are subject to approval of the Agency. Excessive use of water such that pavement might be undermined or sub grade softened shall not be permitted.
- 6.6. **Vaults and Pull Boxes.** The tops of the vault and pull boxes are to be constructed in such a manner that the tops are flush with the adjacent ground line. The locations of vault and pull boxes are subject to approval of the Agency.
- 6.7. **Completion of Construction and Installation.** The Telecommunications System specified in this Agreement on shall be completed within 365 calendar days, beginning on the Effective Date.
- 6.8. **Standards and Warranty.** Any and all work by DTI, its contractors or agents shall be done in a good and workmanlike manner and so as not to interfere with any of the Agency operations. All installations must meet or exceed applicable standards and specifications of the State of Oklahoma and the United States of America in effect at that time and shall further be in compliance with all

existing federal, state or local laws, ordinances and regulations and DTI, at its expense, shall obtain all permits and approvals required to implement the work required to be performed by it under this Agreement. In no case shall any part of the Telecommunications System be located in a manner that will interfere with any operations of the Agencies, its existing permits, licenses or lessees.

- 6.9. **DTI License to Attach**. With prior written approval from the Agency, DTI may use the Agencies' available bridge attachments and similar facilities in its installation and construction of the Telecommunications System, subject to terms and conditions that maybe imposed by the Agency.
- 6.10. **Other Public Utilities**. The Telecommunications System installed over or under other existing public utilities shall be located and installed in accordance with local conditions, laws, orders of public authorities, and such requirements as may be stipulated by the public authority. If in the conduct of such work, any changes or alterations in pipelines, sewers, drains, conduits, fences, power, signal or communication lines or other utilities are necessary (either temporary or permanent), such changes shall be made at DTI's sole cost and expense.
- 6.11. **Restoration of Rights-of-Way**. Upon completion of the installation or any replacement, repair or relocation of the Telecommunications System, DTI shall promptly return the ground to the same condition to that which existed prior to such work, in a manner satisfactory to the Agency's Representative.
- 6.12. **Delivery of As-Built Drawings**. Within 90 days after completing installation of the Telecommunications System, DTI shall, at its sole cost and expense, prepare and submit to the Agencies "as-built" prints showing the location of the Telecommunications System within the Rights-of-Way. DTI will submit to each Agency three copies of the "as-built" prints. DTI will submit to each Agency all of the "as-built" drawings in an Autocad DWG format. The Agencies will determine the version of such Autocad DWG drawings.

## ARTICLE 7

### PERMITS

DTI, at its sole cost and expense, shall secure and maintain in effect all federal, state, and local permits and licenses required for the design, construction, installation, repair, maintenance and operation of the Telecommunications System, including, without limitation, zoning, building, health, environmental or communication permits or licenses, and DTI shall indemnify and hold harmless the Agencies against any loss, cost or expense therefore and against any fines or penalties that may be levied for failure to procure or to comply with such permits or licenses as well as any remedial cost to cure violations thereof. Each Agency agrees to cooperate with DTI in securing on a timely basis all necessary approvals, permits and licenses from all governmental authorities and/or other parties having jurisdiction or approval rights in respect of the use and occupation of the Rights-of-Way. If DTI, after reasonable effort and diligence, is unable to obtain all of the necessary permits and licenses from federal, state and local government authorities for the design, construction, installation or operation of the



Telecommunications System on the Rights-of-Way, DTI may terminate, at the option of DTI, the obligations of DTI under this Agreement with regard to the design, construction, installation or operation of the Telecommunications System by giving written notice thereof to the Agencies. The parties acknowledge and agree that the exercise of "reasonable effort and diligence" by DTI with respect to any required permit or license, as such phrase is used herein, shall not require that DTI (a) commence or prosecute any litigation or any administrative proceeding of an adversarial nature in any court or before any administrative agency against any governmental authority or any other person or entity or (b) expend an amount for costs and expenses which is unreasonable when compared to the costs and expenses generally required to obtain a similar permit or license from a particular governmental authority. Any other term, condition or provision of this Agreement to the contrary notwithstanding, the Agencies and DTI acknowledge and expressly agree that this Agreement and the respective obligations of the parties hereunder are and shall be subject to the acquisition by DTI of all necessary permits, licenses, consents and approvals from ODOT and OTA for the design, construction, installation and operation of the Telecommunications System on right-of-way owned or controlled by ODOT and OTA, respectively, to the extent that the use of ODOT or OTA owned or controlled right-of-way is contemplated or required by this Agreement, including but not limited to all controlled access highway right-of-way, all turnpike right-of-way, and all interstate highway right-of-way.

## **ARTICLE 8**

### **DTI's LICENSE TO ENTER**

The licenses granted to DTI in Article 2 of this Agreement shall include the license for DTI to enter the Rights-of-Way with its employees, agents and contractors in order to exercise DTI's license subject to the terms and conditions in this Agreement. Except for emergency situations, whenever DTI or its employees, agents or contractors desire to enter upon the Rights-of-Way in connection with any activities related to the Telecommunications System, DTI shall notify the appropriate Agency, in writing, forty-eight (48) hours in advance and the notice must explain the scope and estimated duration of the anticipated entry. DTI shall receive written approval from the Agency's Representative prior to entry. If such scope and duration changes, additional notice shall be given and approval solicited. In the event of any emergency impacting upon the Telecommunications System, or any portion thereof, DTI shall verbally or by facsimile give the Agency's Representative advance notice prior to entry upon the affected portion of the Rights-of-Way. Access to the Oklahoma Turnpikes shall be at the then prevailing OTA rates.

## **ARTICLE 9**

### **FACILITY LOCATION SIGNS**

DTI, at its sole cost and expense, shall furnish, erect and thereafter maintain signs identifying all DTI underground facilities. Such signs shall be placed along the outermost Right-of-Way lines in

accordance with industry standards of the telecommunications industry and as approved by the Agency's Representative.

## ARTICLE 10

### MAINTENANCE OF SYSTEM

- 10.1. **General Maintenance.** Upon completion of the Telecommunications System and during the term hereof and each renewal term hereof, DTI shall, at its sole cost and expense, be responsible for the maintenance and repair of the Telecommunications System including replacement of individual Dark Fibers and any maintenance as is necessary for the operation of the Telecommunications System; provided, however, if any ODOT Fibers are damaged or should require repair or replacement as a result of (a) damage caused by the Agencies during installation or maintenance of the electronics on the ODOT Fibers, (b) any intentional misconduct by or on the part of an Agency or any agent, servant or employee of an Agency or (c) any defect in or any malfunction of any electronics connected to the ODOT Fibers constituting a part of the ODOT System, DTI shall have no obligation to repair or replace the damaged ODOT Fibers and the Agencies shall have no right to use the damaged ODOT Fibers, unless the Agencies agree in writing to reimburse DTI the reasonable costs of repairing or replacing the damaged ODOT Fibers. DTI may, at its option, subcontract for maintenance and restoration services hereunder.
- 10.2. **Agency Maintenance.** Each Agency agrees to cooperate with DTI to restore damaged or malfunctioning portion(s) of the Telecommunications System as soon as reasonably possible. Each Agency acknowledges the critical importance to DTI of the uninterrupted operation of the DTI System, and to each Agency the uninterrupted operation of the ODOT System, and DTI agrees to arrive at the site within four hours after receiving notice of the existence of a problem.
- 10.3. **Certain Notices to DTI.** Each Agency will use its best efforts to give forty-eight hours prior notice to DTI if the Agency has knowledge that any person will be digging or trenching on any part of the Rights-of-Way within thirty feet of the FOC; provided, however, that neither Agency shall be responsible or liable to DTI or any other person for any loss, injury or damage caused by or resulting from any such digging or trenching or from any failure to give such forty-eight hour notice or any other prior notice; and, provided further, that DTI shall not be responsible or liable to the Agencies or any other person for any loss, injury or damage caused by or resulting from an failure to act on such notice given by either Agency.

## ARTICLE 11

### RELOCATION

Subsequent to initial construction of the Telecommunications System, if DTI determines that the Telecommunications System or the location thereof must be changed or altered within the Rights-of-Way because of DTI operations or planned operations, or DTI desires to renew, replace, repair or alter any of its structures, properties, facilities or appurtenances or to construct new ones, DTI shall, at its sole cost and expense, promptly submit such plans, in writing, to the appropriate Agency. Only upon written consent by the appropriate Agency shall DTI proceed with such plans. The Agency may deny such request for changes or alteration without cause. If such plans are approved by the Agency, DTI, at its sole cost and expense, shall protect and/or move, as required, the affected System Materials in a manner satisfactory to the Agency's Representative as soon as reasonably practicable. If an Agency determines that any part of the Telecommunications System or the location thereof must be changed or altered because of Agency operations or planned operations, or an Agency desires to renew, replace, repair or alter any of its bridges, culverts, structures, roads, properties, facilities or appurtenances or to construct new ones, such Agency shall notify DTI of such plans. DTI, at DTI's expense, shall protect or move the affected parts of the Telecommunications System in a manner satisfactory to the Agency's Representative as soon as reasonably practicable.

## ARTICLE 12

### TRAFFIC REGULATIONS

- 12.1. **Access.** All use of the Rights-of-Way shall be designed, made, and maintained in accordance with Chapter IV of the current "Manual on Uniform Traffic Control Devices: U.S. Department of Transportation" and Oklahoma Department of Transportation Standard Specifications, Edition of 1988 and any subsequent revisions. It is agreed upon that DTI shall not permit its vehicles and personnel to stop in the traffic lanes, center medians or paved shoulders of the highways, interstates, or turnpikes. DTI shall keep traffic lanes, center medians, paved shoulders or other traffic areas free of excavated material, installation equipment, conduit, and other materials and equipment unless the traffic areas have been appropriately marked and closed, which such closings must be approved, in advance, by the appropriate Agency.
- 12.2. **Traffic Control.** DTI shall be responsible for the placement and cost of all traffic control devices, required by the Agency, and shall comply with the current manual of Uniform Traffic Control Devices and Oklahoma Department of Transportation Standard Specifications, Edition of 1988 and any subsequent revisions.
- 12.3. **Highway Safety.** DTI shall operate to avoid, to the extent practicable, actions that could endanger the Telecommunications System or the operation of an Agency. DTI shall use all precautions to not interfere with Agency operations in the Rights-of-Way. An Agency may, at its option, request that employees, agents and contractors of DTI who are or will be involved in the engineering, construction, installation, operation or maintenance of the Telecommunications System be trained in highway safety matters via courses or materials to be offered or provided by the Agency at the cost of the Agency.

## ARTICLE 13

### INSURANCE

- 13.1. **Required Coverage.** Throughout the term of this Agreement and each renewal term hereof DTI shall procure and maintain in force, at its own cost and expense, Commercial General Liability insurance, including Automobile/Vehicle Liability for owned non-owned and hired automobiles, covering liability assumed by DTI under this Agreement, including a contractual liability coverage endorsement referring to this Agreement, coverage for contractors, premises operations, explosion, collapse and underground hazard, products liability, completed operations, personal and bodily injury, and broad form commercial general property damage, with a combined single limit of not less than \$10,000,000 for bodily and personal injury (including death) and property damage per occurrence. DTI shall also procure and maintain in force Worker's Compensation Insurance in compliance with statutory requirements and with statutory limits, including an "All States" endorsement, and Employer's Liability Insurance with limits of not less than \$1,000,000. The maintenance of the insurance specified in Article 13 shall not limit DTI's liability under this Agreement, but shall be additional security therefore.
- 13.2. **General Conditions.** All insurance required hereunder shall be affected by valid and enforceable policies issued by insurers licensed to do business in the State of Oklahoma. To the extent reasonably obtainable, all the policies required hereunder shall contain agreements by the insurers that (a) no act or omission to act by an additional insured shall impair or affect the rights of the insured to receive and collect the proceeds of such policy, and (b) except in respect of cancellation for non-payment of premium, such policies shall not be canceled or materially changed upon less than 30 days prior written notice to the Agency. Prior to commencing work hereunder on the Telecommunications System, and at any other time upon the request of the Agencies, DTI shall furnish to the Agencies certificates of insurance or other evidence thereof attesting that the insurance required under Article 13 of this Agreement is in effect. Nothing in Article 13 of this Agreement shall be construed to prevent DTI from satisfying its insurance obligations pursuant to this Agreement under a blanket policy or policies, which meets or exceeds the requirements hereof.

## ARTICLE 14

### LIENS AND ENCUMBRANCES


- 14.1. **Liens and Encumbrances.** DTI shall not permit the creation of any mortgage, pledge, security, interest, lien or encumbrance on or pertaining to the Rights-of-Way or any other property or rights of the Agencies, including without limitation tax liens or liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Telecommunications System; provided, however, that the existence of such liens or encumbrances shall not constitute a violation of this sentence if payment

with respect thereto is not yet due and payable; and provided further that DTI may, after written notice to the Agencies, contest the same or the validity thereof in good faith by appropriate proceedings which shall operate to prevent the enforcement of such lien or encumbrance so contested against any property or rights of an Agency. Nothing in this Agreement shall prevent or prohibit DTI from financing the construction and installation of the Telecommunications System with loans from one or more lenders on terms satisfactory to DTI or prevent or prohibit DTI from securing the repayment of such loans with any mortgage, security agreement or other security document creating one or more consensual liens or security interests in or with respect to the DTI System and the licenses of DTI under this Agreement, ~~including but not limited to the nonexclusive license of DTI to use the Rights-of-Way for the purposes of this Agreement;~~ provided, however, that any such lien or security interest shall expressly exclude and shall not encumber the ODOT System or any part of the ODOT System, during the term of this Agreement and each renewal term hereof, the Rights-of-Way or any other rights or property of the Agencies hereunder.

- 14.2. **Ownership of Telecommunications System.** Nothing in this Agreement shall be deemed to give, and each Agency hereby expressly waives any claim of, ownership in any part of the Telecommunications System installed by DTI. Each Agency hereby agrees that no portion of the Telecommunications System installed by DTI shall be or become subject to or collateral under any mortgages, bonds or other indentures of such Agency.

## ARTICLE 15

### **TERM OF AGREEMENT**

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- 15.1. **Term of Agreement.** The term of this Agreement shall commence at 12:01 a.m. on the Effective Date hereof and shall terminate at 12:01 a.m. on the twentieth anniversary of the Effective Date, unless renewed pursuant to Section 15.2 of Article 15 of this Agreement or sooner terminated pursuant to Section 15.3 of Article 15 of this Agreement. Upon completion of the term of this Agreement and each renewal term hereof the ownership of the Telecommunications System shall immediately and automatically transfer to the Agencies.
- 15.2. **Renewal.** DTI shall have the option to renew this Agreement for two additional 5-year terms. The first renewal shall commence at 12:01 a.m. on the twentieth anniversary of the Effective Date and the second renewal shall commence at 12:01 a.m. on the twenty-fifth anniversary of the Effective Date; provided, however, that the right to renew shall be available to DTI only if DTI is not in default under any of the provisions of this Agreement as of the beginning date of each renewal term. Each option shall be exercisable by DTI giving written notice of extension to the Agencies 90 days prior to the end of the term or renewal term, and each renewal term shall be on the same terms and conditions as set forth herein except this option to renew.
- 15.3. **Termination.** This Agreement shall terminate upon complete abandonment in place of the Telecommunications System by DTI. At such time and in such event, the ownership of the

Telecommunications System shall transfer to the Agency. This Agreement shall terminate upon written mutual agreement of the parties hereto. This Agreement shall terminate upon Breach, pursuant to Article 16 of this Agreement. In the event of mutual termination by the parties hereto, DTI shall, at DTI's sole cost and expense, at the option of the Agency, either remove DTI facilities and restore the Rights-of-Way to a condition and in a manner satisfactory to the Agency or abandon the same in place.

- 15.4. **Effect on Obligations.** Termination of this Agreement pursuant to Article 16 of this Agreement shall terminate all obligations of the parties hereunder and this Agreement shall become void and have no effect without any liability on the part of any party, except for the obligations under Article 18 of this Agreement.
- 15.5. **Partial Abandonment.** Upon partial abandonment in place of the Telecommunications System by DTI the ownership of such abandoned segments of the Telecommunications System shall transfer to the Agencies.

## ARTICLE 16

### **BREACH, REMEDIES**

- 16.1. **Breach.** In the event of a Breach of this Agreement by either party, DTI and the Agencies each agree that neither shall proceed against the other by litigation before the offending party has had written notice of and reasonable time, not to exceed 30 calendar days, to respond and cure such Breach or defect; provided, however, neither party shall be required to give the other time to respond and cure if any such delay will cause irreparable harm. For purposes of this Article, any substantial noncompliance or repeated noncompliance which of itself might be considered minor or singular shall constitute a Breach by either party.
- 16.2. **Remedies.** Remedies available to each party upon the occurrence of a Breach hereunder shall include (a) specific performance in equity; and/or (b) litigation for damages and costs; and/or (c) termination.
- 16.3. **Waiver.** Any waiver by any party at any time of any of its rights or licenses as to anything herein contained shall not be deemed to be a waiver of any Breach of covenant or other matter subsequently occurring.

## ARTICLE 17

### **REPRESENTATIONS AND WARRANTIES**

- 17.1. **Representations of DTI.** DTI represents and warrants to the Agencies that (a) it has full right and authority, including any requisite corporate, governmental and third party approvals, to enter into and to perform its respective obligations under this Agreement; (b) the execution of this Agreement does not violate its charter, by-laws or any law, regulation or agreement by which it is bound or to which it is subject; and (c) no litigation or governmental proceeding is pending or, to the knowledge of DTI, is threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or the rights of the parties hereunder.
- 17.2. **Representations of Agencies.** Each Agency represents to DTI that (a) it has full right and authority to enter into and perform its respective obligations under this Agreement; (b) the execution of this Agreement does not violate (i) its charter or by-laws, (ii) any rule, order or regulation applicable to such Agency which has not been waived, or (iii) to its knowledge, without having conducted any independent investigation, any license, permit, property interest conveyance, franchise or right-of-way which may adversely affect DTI's use of the Rights-of-Way or its right to grant the privileges herein provide for; (c) no litigation or government action or proceeding is pending or, to its knowledge threatened, which might adversely affect this Agreement, the transactions contemplated herein or the rights of the parties hereunder; and (d) to its knowledge, without having conducted any independent investigation, the Agencies collectively own all requisite right, title and interest (by fee, license, grant or other interest) in and to the Rights-of-Way, free and clear of any applicable lien, charge, mortgage, pledge, security interest, restrictions or other encumbrance of any kind, in order to grant DTI such privileges and to perform all of their other obligations under this Agreement.

## ARTICLE 18

### **LIABILITY, INDEMNITY**

- 18.1. DTI, as a further consideration and as a condition without which this Agreement would not have been executed and delivered by the Agencies, agrees to indemnify, defend and save harmless the Agencies, their respective officers, employees and agents and to assume all responsibility and liability for death of, or injury to any persons, including but not limited to, officers, employees, agents, patrons, invitees or licensees of the parties hereto and for loss, damage or injury to any property, including but not limited to, that belonging to the Agencies, together with all liability for any expenses, attorneys' fees and costs incurred or sustained by the Agencies, arising from or growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from any neglect, negligence by or on the part of DTI, its officers, employees or agents in connection with the grant or exercise of the privileges hereunder to DTI or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of the Telecommunications System or of any structure incident thereto or any activity conducted by or on behalf of DTI on or in the vicinity of the Rights-of-Way.
- 18.2. Anything in this Agreement to the contrary notwithstanding, DTI shall release and indemnify and save harmless the Agencies, their respective officers, employees and agents, for any damage to the property of DTI, including the Telecommunications System or any of DTI's facilities and all

appurtenances thereto or property of DTI's officers, employees, agents, contractors or subcontractors, arising from or growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from the grant or exercise of the privileges hereunder to DTI or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation or removal of any structure incident thereto or from any activity conducted by or on behalf of DTI or the Agencies on or in the vicinity of the Rights-of-Way; provided, however, that this release and indemnification shall not release, indemnify or otherwise protect the Agencies from any intentional misconduct by or on the part of either Agency or its officers, employees or agents. The Agencies make no representations concerning the structural integrity or suitability of any of their respective property or facilities to be used by DTI hereunder and DTI accepts such property and facilities in their present "as-is" condition and it is expressly understood that DTI uses said facilities at its own risk. At the election of the Agencies, DTI, upon receipt of notice to that effect, shall assume or join in the defense of any claim based on allegations purporting to bring said claim within the coverage of this Article.

## ARTICLE 19

### ENVIRONMENTAL MATTERS

Upon learning of any hazardous or toxic waste conditions within any other portion of the Rights-of-Way that would adversely affect or interfere with the exercise of DTI's licenses hereunder, each party agrees to promptly inform the other of the existence of such hazardous or toxic waste condition. Upon learning of any such hazardous or toxic waste condition on the Rights-of-Way within which the Telecommunications System is intended to be or is located, the appropriate Agency shall, to the extent available to it, offer DTI, without payment of any additional consideration therefore, alternate contiguous areas within which the Telecommunications System may be relocated to avoid such hazardous or toxic waste areas.

## ARTICLE 20

### MISCELLANEOUS

- 20.1. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties with regard to the subject matter of this Agreement. All agreements, covenants, representations and warranties, express or implied, oral and written, of the parties with regard to the subject matter of this Agreement are contained in this Agreement and the documents referred to or implementing the provisions of this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by either party to the other with respect to the subject matter of this Agreement. This is an integrated agreement.



- 20.2. **Recording, Taxes and Other Charges.** DTI agrees that if it is determined by any state or local government authority that the sale, acquisition, license, grant, transfer or disposition from the Agencies to DTI of any part or portion of the property or rights herein described requires the payment of any tax, (including sales or use tax) under any state or federal statute, regulation or rule, DTI shall pay the same, plus any penalty or interest thereon, directly to said taxing authority and shall hold the Agencies harmless there from. DTI shall pay all annual or periodic taxes levied or assessed upon the Telecommunications System or on account of the existence or use of the Telecommunications System, and shall indemnify the Agencies against the payment thereof.
- 20.3. **Independent Contractor Status.** The Agencies and DTI acknowledge and agree that they reserve no control whatsoever over the employment, discharge, compensation of or services rendered by the employees or contractors of the other party, notwithstanding the ability of the parties under this Agreement to exercise certain rights to enforce the various standards and specifications agreed upon pursuant to this Agreement. Nothing in this Agreement shall be construed as inconsistent with the foregoing independent contractor status or relationship or as creating or implying any partnership or joint venture between DTI and an Agency.
- 20.4. **Governing Law and Choice of Forum.** The validity, construction and performance of this Agreement, and any action arising out of or relating to this Agreement shall be governed by the laws, without regard to the laws as to choice or conflict of laws, of the State of Oklahoma.
- 20.5. **Waiver and Amendment.** This Agreement may be amended, supplemented, modified and/or rescinded only through an express written instrument signed by all parties or their respective successors and permitted assigns.
- 20.6. **Assignment.** The obligations of the parties under this Agreement shall not be assigned without the written approval of the other parties.
- 20.7. **Successors and Assigns.** Each of the terms, provisions and obligations of this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties and their respective legal representative, successors and permitted assigns.
- 20.8. **Notices.** Unless otherwise provided herein, all notices and communications concerning this Agreement shall be addressed to the other party as follows:

If to DTI:  
Digital Teleport, Inc.  
8112 Maryland Ave., 4<sup>th</sup> Floor  
St. Louis, Missouri 63105  
Attn: President

If to the Agencies:  
Oklahoma Transportation Authority  
3500 Martin Luther King Ave.  
Oklahoma City, OK 73111  
Attn: Director of Information Technology

or at such other address as may be designated in writing to the other party. Unless otherwise provided herein, notices shall be sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, and shall be deemed served or delivered to the addressee or its office on the date of return receipt acknowledgment or, if postal claim notices are given, on

the date of its return marked "unclaimed,"; provided, however, that upon receipt of a returned notice marked "unclaimed," the sending party shall make reasonable effort to contact and notify the other party by telephone.

- 20.9. **Severability**. This Agreement is executed by all parties under current interpretations of applicable federal, state or local statute, ordinance, law or regulations. Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other separate division or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall have no effect upon the validity or enforceability of each and every other separate division herein contained, or any other combination thereof.
- 20.10. **Further Action**. Each party agrees to perform any further acts and to execute and delivery an other documents which may be reasonable necessary to effect the provisions of this Agreement.
- 20.11. **Warranty of Authority**. Each of the individuals signing this Agreement on behalf of a party warrants and represents that such individual is duly authorized and empowered to enter into this Agreement and bind such party.
- 20.12. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.
- 20.13. **Section Headings**. Section headings herein are for convenience of reference only and shall not be used in the interpretation or construction hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

DIGITAL TELEPORT, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AS TO FORM

OKLAHOMA TRANSPORTATION AUTHORITY

\_\_\_\_\_  
OTA Legal Counsel

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

AS TO FORM

OKLAHOMA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
ODOT Legal Counsel

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_